United States Court of Appeals for the Second Circuit



APPENDIX

75-7481

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

PH

NO. 75-7481

ODESSA CARRION,

Plaintiff-Appellant,

-against-

YESHIVA UNIVERSITY,

Defendant-Appellee.

JOINT APPENDIX ON APPEAL

RABINOWITZ, BOUDIN & STANDARD
30 East 42nd Street
New York, New York 10017
Attorneys for
Plaintiff-Appellant

WINER, NEUBURGER & SIVE 425 Park Avenue New York, New York 10022 Attorneys for Defendant-Appellee



PAGINATION AS IN ORIGINAL COPY

TABLE OF CONTENTS

	Page
Relevant Docket Entries	la
Amended Complaint	4a
Answer to Amended Complaint	13a
Transcript of Relevant Testimony	16a
Oral Opinion Dismissing Complaint	131a
Court Exhibit 1 - Stipulation of Fact	138a
Plaintiff's Exhibit 4 - Evaluation of Carrion dated July 3, 1967	142a
Plaintiff's Exhibit 6 - Letter dated January 8, 1968	143a
Plaintiff's Exhibit 7 - Letter dated January 23, 1967	145a
Plaintiff's Exhibit 8 - Complaint before the Commission on Human Rights	146a
Plaintiff's Exhibit 9 - Evaluation of Carrion on December 31, 1968	149a
Plaintiff's Exhibit 10 - Notice of Suspension dated October 28, 1969	152a
Plaintiff's Exhibit 11 - Letter dated Oct ber 29, 1969	153a
Plaintiff's Exhibit 12 - Notice of Discharge dated October 31, 1969	154a
Plaintiff's Exhibit 14 - Letter dated January 28, 1970	155a

		Page
Plaintiff's	Exhibit 15 - Letter dated February 2, 1970	157a
Plaintiff's	Exhibit 16 - Memorandum dated February 25, 1970	158a
Plaintiff's	Exhibit 20 - Letter dated July 2, 1971	159a
Plaintiff's	Exhibit 25 - Testimony of Richard Cagan before the New York City Commission on Human Rights	160a
Plaintiff's	Exhibit 26 - Deposition of Abraham Silverberg	181a
Plaintiff's	Exhibit 27 - Answers to Interrogatories and Interrogatories	211a
Plaintiff's	Exhibit 28 - Request for Admission of Facts and Response	222a
Plaintiff's	Exhibit 29 - Affiliation Contract	226a
Plaintiff's	Exhibit 31 - Testimony of Richard Weeks before the New York City Commission on Human Rights	270a
Defendant's	Exhibit H - Memorandum dated October 1, 1969	278a
Defendant's	Exhibit I - Memorandum dated October 3, 1969	279a
Defendant's	Achibit J - Memorandum-Petition dated October 3, 1969	281a
Defendant's	Exhibit K - Inter-department Memorandum dated October 21, 1969	283a
	Exhibit L - Memorandum dated October 22, 1969	284a

	Page
Findings of Fact and Conclusions of Law	285a
Defendant's Motion and Affidavit on Counsel Fees	305a
Opinion on Counsel Fees	3163

RELEVANT DOCKET ENTRIES

ODESSA CARRION v. NEW YORK UNIVERSITY and YESHIVA UNIVERSITY, 71 CIV. 3007

Date .	Proceedings
July 6, 1971	Complaint
July 9, 1971	Plaintiff's motion for preliminary injunction
July 29, 1971	Cross-motion by Yeshiva University for summary judgment
August 2, 1971	Plaintiff's opposition to defend- ant's motion to dismiss or for summary judgment
April 18, 1972	Opinion denying plaintiff's motion for preliminary injunction and defendant's motions to dismiss and for summary judgment
July 17, 1972	Answer of defendant Yeshiva University to complaint
July 21, 1972	Answer of defendant New York University to complaint
November 27, 1973	Plaintiff's notice of motion to amend complaint
December 20, 1973	Defendant's memorandum of law in opposition
February 27, 1974	Order granting motion to amend complaint
May 6, 1974	Plaintiff's Interrogatories

May 13, 1974	Amended Complaint
May 14, 1974	Answer of Defendant N.Y.U. to amended complaint
May 20, 1974	Answer of Defendant Yeshiva University to amended complaint
June 18, 1974	Defendant N.Y.U. Answers to Interrogatories
March 12, 1975	Defendant Yeshiva University's response to admissions
March 12, 1975	Defendant Yeshiva University ans- wers to Interrogatories
May 20, 1975	Stipulation and order of discontinuance against Defendant N.Y.U.
May 21, 1975	Non-jury trial begun
May 22, 1975	Trial continued and concluded; Decision for Defendant dismissing complaint
June 13, 1975	Defendant's notice of motion for Attorney's fees
June 13, 1975	Defendant's memorandum of law in support of motion
June 13, 1975	Defendant's proposed findings of fact and conclusions of law
June 17, 1975	Plaintiff's proposed findings of fact
July 30, 1975	Judgment dismissing complaint with prejudice and ordering plaintiff to pay defendant reasonable attorney's fees of \$5,000 and costs of \$630.36

August 18, 1975

September 22, 1975

Plaintiff's notice of appeal from final judgment

Record on appeal certified and transmitted to U.S.C.A.

AMENDED COMPLAINT

ODESSA CARRION.

Plaintiff,

CIVIL ACTION NO. 71 Civ. 3007

A

vs.

NEW YORK UNIVERSITY and YESHIVA UNIVERSITY,

Defendants.

AMENDED COMPLAINT

I

Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1343(3); 42 U.S.C. §2000e et seq. and 28 U.S.C. §\$2201 and 2202. This is a suit in equity authorized and instituted pursuant to Title VII of the Act of Congress known as the Civil Rights Act of 1964, 42 U.S.C. §2000e et seq. The jurisdiction of this Court is invoked to secure protection of and to redress deprivation of rights secured by (a) 42 U.S.C. §2000e et seq., providing for injunctive and other relief against racial discrimination in employment, (b) 42 U.S.C. §1981, providing for the equal rights of all persons in every state and territory within the jurisdiction of the United States, (c) 42 U.S.C. §1983, providing for relief from any deprivation under color of law of rights secured by the Constitution of the United States.

II

This is a proceeding for a declaratory judgment as to plaintiff's rights and for (a) a preliminary and permanent injunction, restraining both defendants from maintaining a policy, practice, custom or usage of discriminating against plaintiff because of race or color with respect to compensation, terms, conditions and privileges of employment including promotional opportunities, (b) a preliminary and permanent injunction restraining the defendant Yeshiva University from denying plaintiff promotional opportunities and discharging plaintiff without due process of law or in retaliation for the fact that plaintiff charged the defendant Yeshiva University with discriminatory employment practices, and (c) an award of back-pay ancillary to and as part of this equitable relief.

III

Plaintiff Odessa Carrion is a black citizen of the United States and a resident of New York City in the State of New York. Plaintiff Odessa Carrion was employed by defendant Yeshiva University's Albert Einstein College of Medicine as a social work supervisor at Lincoln Hospital in the City and State of New York.

Defendant Yeshiva University, which is located within the City and State of New York, includes the Albert Einstein College of Medicine, which has an affiliation contract with the City of New York under the terms of which the Albert Einstein College of Medicine is required to provide Lincoln Hospital, a municipal hospital located in the City and State of New York, with professional and other services and to pay the salary of certain staff assigned to Lincoln Hospital, including the plaintiff. Defendant Yeshiva University is an employer within the meaning of 42 U.S.C. §2000e-(b) in that Yeshiva University is engaged in an industry affecting commerce and employs at least fifty persons.

Defendant New York University, which is located within the City and State of New York, includes the New York University Graduate School of Social Work. Students f the New York University Graduate School of Social Work are assigned to the Department of Social Service of Lincoln Hospital for field work. On information and belief, defendant New York University participates with defendant Yeshiva University in the hiring of those social workers known as student unit supervisors who supervise New York. University students in the field work at Lincoln Hospital. Defendant New York University is an employer within the meaning of 42 U.S.C. §2000e-(b) in that New York University is engaged in an industry affecting commerce and employs at least fifty persons.

Amended Complaint

All conduct of defendants in connection with Lincoln Hospital, including the actions described herein affecting plaintiff, was and is under color of law and constitutes state action.

V

Plaintiff Odessa Carrion was hired by Yeshiva University as a social work supervisor in January, 1967 and employed in the Department of Social Service of Lincoln Hospital. In August 1967 and again in September 1967, Odessa Carrion was twice denied a promotion to the position of student unit supervisor of New York University students because of her race. On information and belief, both New York University and Yeshiva University participate in the hiring of student unit supervisors for New York University social work students.

VI

On August 24, 1967 Odessa Carrion filed a complaint with the New York City Commission on Human Rights charging New York University and Yeshiva University with an unlawful discriminatory practice. The complaint against New York University was dismissed by the Commission on May 14, 1969 at the close of the presentation of the case on behalf of Odessa Carrion.

VII

During the pendency of the proceedings in the New York
City Commission on Human Rights, Odessa Carrion was denied a
promotion by Yeshiva University to the position of Director
of Social Service for the Neighborhood Maternity Center because
of her race.

VIII

On October 21, 1969, a hearing was held by officials of the American Federation of State, County & Municipal Employees regarding charges against Mrs. Carrion. Plaintiff was not told of this hearing, permitted to attend, informed of or allowed to respond to the charges, allowed to call or examine witnesses or introduce other evidence, or be represented by counsel. As a result of this hearing grievances were presented against Mrs. Carrion to Mr. Silverberg. Mrs. Carrion was not informed that grievances had been filed, informed of their nature, allowed to respond to them, permitted to call or examine witnesses or introduce other evidence before Mr. Silverberg, or to be represented by counsel. As a result of this grievance hearing, Mr. Silverberg suspended Mrs. Carrion with pay. Mrs. Carrion objected in writing to this suspension, and appealed to the Director of the Hospital, Dr. Lubell, urging that Mr. Silverberg had no authority to suspend her. Pending a response from Dr. Lubell, Mrs. Carrion, on the advice of the National Association of Social Workers, continued to report for work. On October 31, 1969, Mr. Silverberg fired Mrs. Carrion for disobeying his suspension order. Mrs. Carrion was only informed on behalf of Dr. Lubell that the suspension was proper 12 days after she was fired, on November 11, 1971. This dismissal procedure was in violation of due process of law. Defendant Yeshiva University in fact fired Mrs. Carrion

in retaliation for her action in charging Yeshiva with employment discrimination. On January 15, 1970, Yeshiva University reinstated Odessa Carrion in her position of social work supervisor with back pay in compliance with an interim order of the New York City Commission on Human Rights.

IX

On January 22, 1970, the New York City Commission on Human Rights found that Odessa Carrion had been discriminatorily denied two promotional opportunities on account of her race and had been discharged by Yeshiva University in retaliation for her charge against Yeshiva University of employment discrimination. Yeshiva University petitioned the New York State Supreme Court for an order setting aside the final decision and order of the New York City Human Rights Commission. On August 6, 1970 the New York State Supreme Court annulled the findings and orders of the Human Rights Commission and ordered that the complaint of Odessa Carrion before the Commission be dismissed on the merits. The New York City Commission on Human Rights appealed the decision of the Supreme Court to the New York State Appellate Divsion, First Department, which unanimously affirmed the order and judgment of the Supreme Court on February 18, 1971. Leave to appeal to the New York Court of Appeals was denied by that court on May 13, 1971.

X

On or about June 3, 1971 Albert Einstein College of Medicine of Yeshiva University informed Odessa Carrion that in light of

Amended Complaint

the decisions of the courts of New York State upholding her discharge of October 31, 1969, her employment with Yeshiva University was terminated effective June 4, 1971, and she is required to return to Yeshiva University \$3,200.14 paid to her subject to court review by Yeshiva University in compliance with the order of the New York City Commission on Human Rights that she be reinstated with back-pay on January 15, 1970.

XI

During the period of Odessa Carrion's employment by Yeshiva
University pursuant to the order of the New York City Commission
on Human Rights that she be reinstated, Odessa Carrion performed
her duties as a social work supervisor at Lincoln Hospital
competently, and Yeshiva University was in no way prejudiced by
her reinstatement. Odessa Carrion is ready, willing and able
to resume her duties as social work supervisor at Lincoln Hospital.

XII

On October 5, 1967 within ninety (90) days of the occurrence of the acts of which Odessa Carrion complains, Odessa Carrion filed written charges, under oath, with the Equal Employment Opportunity Commission alleging the denial by New York University and by Yeshiva University of her rights under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e et seq. On June 8, 1971 Odessa Carrion was notified by the Equal Employment Opportunity Commission that she is entitled to institute a civil action in the appropriate Federal District Court within thirty (30) days of receipt of said letter.

XIII

Plaintiff has no plain, adequate or complete remedy at law to redress the wrongs alleged herein and this suit for a preliminary and permanent injunction and declaratory relief is her only means of securing adequate relief. Plaintiff is now suffering and will continue to suffer irreparable injury from the defendants policies, practices, customs and usages as set forth herein.

WHEREFORE, plaintiff respectfully prays this Court to advance this case on the docket, order a speedy hearing at the earliest practicable date, cause this case to be in every way expedited and upon such hearing to:

- 1. Declare plaintiff's right not to be discriminated against with respect to the compensation, terms, conditions or privileges of employment or denied employment opportunities by New York University or Yeshiva University either on account of her race or color or because she opposed unlawful employment practices.
- 2. Grant plaint of a preliminary and permanent injunction enjoining the defendants, their agents, successors, employees, attorneys and those acting in concert with them and at their direction from continuing to abridge the rights of plaintiff.
- 3. Grant plaintiff a preliminary and permanent injunction requiring defendant Yeshiva University to reinstate plaintiff.
- 4. Direct defendants Yeshiva and New York Universities to give plaintiff appropriate back-pay and otherwise to make plaintiff whole.

5. Grant to plaintiff attorneys fees and all other relief to which she may appear entitled.

JACK GREENBERG/ WILLIAM L. ROBINSON

ANN WAGNEP /

ERIC SCHNAPPER

10 Columbus Circle

Suite 2030

New York, N.Y. 10019

(212) 586-8397

Attorne for Plaintiff

[SAME CAPTION]

Defendant, YESHIVA UNIVERSITY, by its Attorneys, as its answer to the Amended Complaint herein alleges:

FIRST DEFENSE

- I. Neither admits nor denies the allegations contained in Paragraphs I and II of the Amended Complaint as they attempt to state conclusions of law, but if required to answer would deny these allegations.
- Admits the ellegations contained in paragraphs III,
 VI, IX and X of the Amended Complaint.
- 3. Denies each and every allegation contained in paragraph 1% of the Amended Complaint, except denies that it has knowledge or information sufficient to form a belief as to the allegations pertaining to defendant NEW YORK UNIVERSITY, and except admits that YESHIVA UNIVERSITY is located in the City of New York, and includes the Albert Einstein College of Medicine and had and has a contract with the City of New York under the terms of which the Albert Einstein College of Medicine is required to provide Lincoln Hospital, a municipal hospital located in the City of New York, with professional and other services, and to pay the salary of certain staff assigned to Lincoln Hospital, which did include the plaintiff to the extent that the plaintiff was caployed in connection with affiliation contract activities, and further admits that YESHIVA UNIVERSITY employs at least 50 persons.

Answer To Amende: Complaint

- 4. Denies each and every allegation contained in paragraph V of the Amerided Complaint, except admits that plaintiff was hired by YESHIVA UNIVERSITY as a social worker supervisor in January, 1967.
- 5. Denies the allegations contained in paragraph. WIF of the Amended Complaint.
- of the Amended Complaint, except admits that ABRAHAM SILVERSENS received complaints relating to plaintiff's conduct and threats of a work stoppage by personnel at Lincoln Hospital if YESHIVA UNIVERSITY failed to take action with respect to such conduct, and admits that YESHIVA UNIVERSITY discharged the plaintiff for insubordination, and further admits that YESHIVA UNIVERSITY reinstanted the plaintiff with back pay on January 14, 1970 pursuant to an Interim Order of the New York City Commission on Human Rights.
- 7. Denies the allegations contained in paragraphs XI, XII and XIII of the Amended Complaint, except admits that in a letter dated June 7, 1971, the Equal Development Opportunity Commission informed plaintiff that a Civil Action could be instituted in a United States District Court.

SECOND DEFENSE

8. The Court lacks subject matter jurisdiction.

THIRD DEFENSE

9. The plaintiff is collaterally estopped from maintaining this action.

FOURTE DEFENSE

10. YESHIVA UNIVERSITY employment activities at Lincoln Bospital and the position of "Student Unit Supervisor" are not encompassed by Title VII of the Civil Rights Act of 1964.

FIFTE DEFENSE

11. The claims relating to injunctive relief are moot, and plaintiff has an adequate remedy at law.

WHEREFORE, defendant, YESHIVA UNIVERSITY, demands judgment dismissing the complaint, the award of attorneys' fees, and costs and disbursements of this action.

Dated: New York, New York May /5 , 1974

Yours, etc.,

SIDMEY SCHUTZ DANIEL RIESEL Attorneys for Defendant YESHIVA UNIVERSITY

425 Park Avenue

New York, New York 10022
(212) 421-2150

TO: James C. Gray, Jr., Esq. Legal Defense Fund Attorney for Plaintiff 10 Columbus Circle New York, New York 10019

William C. Forth, Esq.
Office of Legal Counsel
Attorney for Defendant
New York University
1 Washington Square Village, Suite 1-A
New York, New York 10012

TRANSCRIPT OF RELEVANT TESTIMONY

lhesb 1 UNITED STATES DISTRICT COURT 2 SOUTHERN DISTRICT OF NEW YORK 3 4 ODESSA CARRION, 5 'Plaintiff, 6 71 Civ. 3007 7 YESHIVA UNIVERSITY, Defendant. 9 My Cart Mark Cart . 10 11 Before: 12 HON. WHITMAN KNAPP, 13 District Judge. 14 May 21, 1973 2:00 p.m. 15 16 APPEARANCES: 17 JAMES C. GRAY, JR., ESQ. LINDA GREENE, ESQ. 18 Attorneys for Plaintiff 19 20 DANIEL RIESEL, ESQ. RICHARD GUY LELAND, ESQ. 21 (SIDNEY SCHUTZ, General Counsel) Attorneys for Defendant 22

23

24

25

lhesb

1 .

2

3

5.

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

the stand.

ODESSA CARRION, called as a witness,

being first duly sworn, testified as follows:

BY MR. GRAY:

Q Mrs. Larrion, would you state for the Court your name and your address, please.

A I gave my name. 5500 Fieldstone Road, Riverdale

Q What is your present position?

A I am the Director of Social Work for the Health and Hospital Corporation. That means that I have the nineteen City Hospital Social Worker Departments under mine, both medical and psychiatric, so I am Director of Social Work for thirty-eight Social Work Departments.

Q Mrs. Carrion, could you tell the Court what your educational background is?

A I am a graduate of Wayne University in Detroit,
Michigan, where I received my A.B., and I am a graduate with
a Master's Degree from the University of Michigan's
Graduate School of Social Work.

Q When did you get your Master's Degree from the University of Michigan?

A 1956.

١

6

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

	Q	What is	your	employment	background?

A I have worked in every phase of social work, in the field of social work. I have worked for the Children's Court, Youth House for Boys and Girls, the Hospital System and the Mental Hygiene Clinics --

THE COURT: When did you work for Youth House?

THE WITNESS: 1951 or 1952.

THE COURT: That's while I was on the Board.

THE WITNESS: That's interesting.

I also worked for the Training School for Girls.

I have been a school social worker for the Board of

Education, known as a psychiatric consultant to the Board of

Education personnel.

- Q Mrs. Carrion, I show you Plaintiff's Exhibit 1
 marked for identification --
 - A There is a lot of other --
 - Q -- would you identify that, please?
- A This is a copy of my resume. It is an old copy.

 It is not the present updated one.
- Q Would this be similar to the resume that you submitted to Einstein Hospital?
 - A Yes. This is the one which I submitted.

MR. GRAY: I would like to move this in evidence.

THE COURT: I take it there is no contention she

wasn't qualified?

15 :

-

THE COURT: Premature.

MR. RIESEL: No, your Honor. We hired -Yeshiva University hired the plaintiff and certainly there
is no contention that we were wrong.

(Plaintiff's Exhibit 1 for identification received in evidence.)

Q Mrs. Carrion, prior to your obtaining your position with the Health and Hospital Corporation, what position did you hold previously?

Hospital for the Einstein College of Medicine. I had charge of social work in all of the 17 outpatient clinics, as well as the screening clinic, as well as screening patients who were referred to the Mental Hygiene Clinic. In this position, I had charge of four workers who worked under me.

Previous to that position, what position did you hold?

A I was a Social Work Supervisor for Columbia
University at Harlem Hospital, and in that position I
established social services on the OBGY and premie nursery
wards. These are different services.

What does that mean?

Hospital?

Exhibit 2.

into evidence.

and preemie nursury is premature babies.

Maurice Russell.

when I -- while I was working there.

somebody who is not in Court.

MR. RIESEL: Objection.

THE COURT: On what ground?

Obstetrics is one and gynecology is the other

Who was your immediate supervisor at Harlem

I now show you an exhibit marked Flaintiff's

That's an evaluation which Mr. Russell did for me

MR. GRAY: I would like o move that evaluation

MR. RIESEL: This is a document prepared by

Would you tell the Court what that is?

-	
~	
-	

3

8

9

10

11

12

13

14

15

16

17

18

19 20

21

22

23 24

25

THE COURT: At any rate, it is an evaluation that she is a good worker?

MR. GRAY: That's correct, your Honor.

THE COURT: That's conceded.

MR. GRAY: If it is conceded, I will accept that for the time being.

THE CLERK: Is it received?

THE COURT: No, objection sustained.

:	Q Mrs. Carrion, directing your attention to
	January 1967, did you have a change in your employment
	status then?

A Yes. Violet Bemmels, who was the Assistant
Director at Harlem Hospital, she supervised me at Harlem,
and she left Harlem to work at Lincoln, to work for
Einstein, and she contacted me and asked me to come to
Lincoln Hospital to help her establish qualified social
work in the clinics that I had previously been in.

Did Miss Bemmels interview you for the position that you eventually obtained?

A Yes, she interviewed me and also Margaret Bernstein.

- Q Who is Margaret Bernstein?
- A She at that time was the Director of Social Work.
- Q At the time that you were hired, were you hired by Lincoln Hospital or Albert Einstein College of Medicine or the City?

A I was hired by Albert Einstein College of Medicine

In February -- I came on in January, and in February I was

asked by Miss Bemmels, and I think Mr. Silverberg was

involved in this -- Mr. Silverberg is the liaison officer

for Einstein -- to go down to the City Civil Service

Commission and register to -- so that Einstein could get

payment for a beginning social work position which, as they
said to me, would help them pay my salary, which at the time
was \$11,000.

Q So in February, did you apply or did you fill out papers for --

A I filled out papers. I went to the Civil Service Commission, I filled out papers and went through the process. I then was accepted as a member of D.C. 37, having moved into this city thing.

MR. RIESEL: I couldn't hear the witness, I'm sorry.

THE WITNESS: I said I became a member of District Council 37 as a result of filling out those papers at the Civil Service Commission.

THE COURT: Is it a union?

THE WITNESS: Yes, the City union.

MR. RIESEL: I move to strike out that testimony that was not responsive to the question, and there is no foundation to show that the witness has any knowledge of the truthfulness of that statement — that is, that she became a member of District 37 by filling out some papers.

District 37 is a union.

MR. GRAY: Your Honor, I will agree to strike the testimony and then ask the witness --

22a

7

10

11

12

13

14

15

16

17

. 18

19

20

21

22

23

24

25

	Q	Did	you	fill	out	papers	for	City	employment?
- 1									

A I did, and I also filled out papers to become a member of D. C. 37.

Q At this time you were receiving a salary from the City and from Einstein?

A Yes. Then in Earch of the same year, I was then called back into conference with Miss Bemmels, and I think Mr. Silverberg was there, and I was told that the City no longer would go along with this kind of procedure, that the college could not collect two salaries for one person, so that I was told that I had a choice of either staying with the City or else staying with the college.

At the time the City was only paying something like \$6,000, and I had a daughter and a mother to support, I couldn't afford a \$5,000 cut, so I decided to stay with the college and then was dropped from the City payroll.

Q You were dropped from the City payroll. How much were you earning at the time that you first started working there?

A \$11,000.

Q At Lincoln Hospital, were Einstein employees and City employees treated differently?

A No. They were really treated on the same basis, with one exception. The Einstein, as we call them, they

1

for the outpatient clinic?

Ī

A I supervised all of the work of the social workers

In your unit?

_

6

A In my unit. I set up a program of the quality of social work which I wanted my workers to carry out in relation to patient need and care

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

25

when the medical doctors examined a patient and found the patient to be psychotic and referred the patient to the mental hygiene clinic, I was asked to screen this patient to determine if this patient were a legitimate

mental patient or, let's say, pre-mental patient, and this I did.

- Q You also supervised employees in your unit?
- A Oh, yes. That I did. In addition, too, I did an awful lot of things, if you want me to enumerate them.
 - Q I think not at this point.

Was your office located in the main part of the hospital?

A No, my office was sitting right in the middle of the outpatient clinic, which was about three-quarters of a block from the main office.

When I came there, I decided to take that office because I was near the doctors and the nurses, and there was a lot of confusion going on when I first came in because

2 | supervisor?

1

5

6

7

9

10

11

12

3

14

15

16

17

18

19

20

21

22

23

24

25

3 . .

MR. RIESEL: I object to the question, your Honor.

I can't tell what that question means.

THE COURT: He means who was her boss and who was his boss, and so on.

Is that what you mean?

GRAY: That's exactly my question, your Honor.

A My immediate supervisor was Violet Bemmels. That was the woman that hired me. She was the Assistant Administrator to Margaret Bernstein, who was the Director of Social Workers, who was Miss Bemmels' supervisor. Then Miss Bernstein didn't have a supervisor. She related directly to administration.

- Q Who would be the administrator that you related to or would there be more than one?
- A At the time I came in there, Mr. Andrew Walker,
 I think, was the Assistant Administrator under whom social
 work was placed.
 - Q Then who would be his immediate --
- A The Executive Director of the hospital, and at the time it was Nasry Michelin.
- Q Directing your attention to the spring of 1967, shortly after you were employed there, were you familiar with a Mr. Raymond Kagan?

1

6

8

9

10

11

12

13

15

16

17

18

20

21

23

25

24

A Yes. At the time I came in, Mr. Kagan was the Student Unit Supervisor for NYU, and Miss Bemmels told me about Mr. Kagan's position and was wondering, you know, if I was interested --

MR. RIESEL. Your Honor, I hate to interrupt the witness, but I cannot hear the witness.

THE COURT: Why don't you come up here and bring your colleague with you.

(Record read.)

A -- in supervising students. So then I talked with Mr. Kagan about this, and he suggested that I go down to -- or that I call a Dr. Leon -- not Dr. Leon, Professor Leon, who was the individual who had charge of Student Unit Supervision for NYU and set up an appointment to go in and talk to him, and I did that.

He requested that I send him a resume. I did this. He gave me an appointment somewhere around about May. I went in and talked to him. He said that I was highly qualified.

MR. RIESEL: Your Honor, I object to that answer and I move to strike. I move to strike out the statement that "I was highly qualified."

Professor or Dr. Leon is not a party to this -is not a representative of a party to this lawsuit.

3

5.

6

8

9

10

12

13

14

15

that?

17

18

19

20

21 22

23

24

25

THE COURT: Okay. Motion granted. There is no -I understand you don't contest that she was qualified.

MR. RIESEL: Your Honor, we do not contest that the plaintiff was a qualified social work supervisor. We certainly think there is an issue of whether the people who were hiring for these two jobs thought she was the bright person or, indeed, whether the plaintiff was qualified to be a student unit supervisor.

I think that is a very important distinction,
because at the time that these jobs were being asked for,
I am not quite sure, and, of course, the evidence will have
to be reviewed, whether the people had that impression.

THE COURT: Strike the hearsay statement.

THE WITNESS: May I say something in relation to

MR. GRAY: No.

THE WITNESS: I had supervised students for Columbia University --

THE COURT: You let your lawyer run the case.

MR. RIESEL: Move to strike out the statement.

THE COURT: Motion granted.

BY MR. GRAY:

Q You did go down and see Professor Leon?

A Yes.

1	
•	
2	
3	
7	
4	
4	24
	- 1
	-3
	2.1
F.	
5	
	34
	-
0	- 4
0	
6	
-	
7	
7	
200	
8	
0	
9	
9	
•	
0	
-	
0	
-	
1	
1	
1	
1	
2	
2	
2	
2	
2	
2	
12	
12	
12	
12	
12	
2	
12	
3	
3	
3	
3	
3	
12	
13 14 15	
13 14 15	
13 14 15	
13 14 15	
13 14 15	
13 14 15	
13 14 15	
12 13 14 15 16	
12 13 14 15 16	
12 13 14 15 16	
12 13 14 15 16	
13 14 15	
12 13 14 15 16	
12 13 14 15 16	
12 13 14 15 16 17 18	
12 13 14 15 16 17 18	
12 13 14 15 16 17 18	
12 13 14 15 16 17 18	
12 13 14 15 16 17 18	
12 13 14 15 16 17 18	
12 13 14 15 16 17 18	
12 13 14 15 16 17 18	
12 13 14 15 16 17 18	

22

23

24

25

Q Did you correspond with him? Did you send him correspondence and did you receive correspondence back from him?

A Yes. And this is where he gave me the appointment and then told me that they didn't have anything at that particular time, but he certainly would keep me in mind if something came in.

THE COURT: Who is this who said it?

THE WITNESS: Professor Leon, the man who interviewed me for the student unit supervisor's job at NYU

THE COURT: What is Mr. Leon's relationship to this client, the defendant?

MR. RIESEL: Your Honor, the defendant -Professor Leon was an employee of a former defendant here,
New York University. On the eve of trial, New York
University was dismissed.

THE COURT: My understanding is that they were dismissed on the condition that it wouldn't affect the scope of the evidence in this case and, therefore --

MR. RIESEL: No, your Honor, the stipulation, I think with all due deference to your Honor, the stipulation and the intent of the parties were that the dismissal of NYU would not affect our rights whatsoever.

THE COURT: No, it was the plaintiff's rights.

aware of?

Directing your attention to June of 1967,

2

1

3

4

5

7

8

.

10

11

12

13

15

16

17

18

19

20

22

23

24

25

A Miss Bernstein terminated her employment at Lincoln Hospital, and Mr. Kagan -- it was rumored that Mr. Kagan was going to replace her, and he did replace her in July, I think it was July 1st of 1967.

were there any changes in your department that you became

Q July 1st, 1967?

A Right.

Q During this period did you discuss with Mr. Kagan anything about his former position?

A Yes. As soon as I found out that he was going to replace Mrs. Bernstein --

THE COURT: Was Mrs.Bernstein's job the one you wanted?

THE WITNESS: No. I wanted the student unit supervisor's job.

THE COURT: What was Miss Bernstein's job?

THE WITNESS: Director of Social Workers.

She terminated her employment there in June of 1967. I asked to see Mr. Kagan to discuss the possibility of my taking his position as the student unit supervisor.

It was obvious that this position was open. So when I went in to talk to him, he said that he and

Professor Leon were working on this position or this situation, and that they would come up with a decision and that I was being considered.

Then I heard no more for the next three weeks and I went back again. I asked for an appointment and I went back again to Mr. Kagan.

At the time Mr. Kagan said to ma, "Yo know, the job only pays nine, five, and you are making 11,000 now, and you have a daughter and a mother to support, I am sure that you can't afford to take that cut for 1500."

I said, "I know that you are making 11,000, and my question is why is it you are only offering me nine, five and you 11,000 when I am equally as qualified as you, if not more so?"

He said, "NYU is broke, they don't have any money," and I said, "NYU has this play called the Man From LaMancha and I read from the papers that they are making an awful lot of money off of 't."

He said, that is just publicity. That ended the interview. At no time did I tell him I wouldn't take the nine, five. I just picked up my bag --

- You were at that time making 11,000?
- A I was making 11,000, yes.

MR. RIESEL: Your Honor, I have a problem,

	•	
- 7	,	
	•	

1

THE COURT: She was not deriving her interest from Mr. Kagan by assignment. You made your point. You haven't waived it.

5

7

8

MR. GRAY: Your Honor, we would oppose his objection on the grounds that the testimony of Mr. Kagan is being offered into evidence by both sides. Mr. Kagan was examined on essentially the very points, and Mrs.

9

Carrion was present when he testified and Mr. Kagan was present when she testified.

10

Therefore, we think that the objection should be overruled.

12

THE COURT: Okay, you made your point.

13

14

BY MR. GRAY:

15

Q During the time that this was occurring, June, July, 1967, were you evaluated by your supervisor?

16

Miss Bemmels? Yes.

18

Q I show you Plaintiff's Exhibit 4.

19

A Yes, this is it.

20

Q Is this the evaluation?

21

A Right.

22 23

MR. GRAY: I'd like to move this evaluation into evidence.

24

THE COURT: Miss Bemmels is employed by

25

Yeshiva?

supervisor.

.

THE WITNESS: Yes. She was my immediate

MR. RIESEL: Your Honor, we have an objection The document is prepared by somebody who is not present in court.

THE COURT: But it was prepared by your client, an agent of your client, ir the course of her business. Why isn't it admissible? In the course of her carrying out her functions as your client's agent. Why wouldn't it be admissible?

MR. RIESEL: Yes, your Honor, but I realize this comes under the exception to the hearsay rule if it was a statement made by the plaintiff -- excuse me, made by our agent, but that foundation has not been shown. That's the basis of my objection.

THE COURT: She says she got it from -- how did you get hold of this document?

Q Miss Carrion, was this document shared with .
you at the time?

A Yes, this was presented at the Civil Rights hearing at 80 Lafayette Street.

Q No, did you at the time Miss Bemmels wrote this, did she show you a copy?

A Yes.

- 1	III)W ' Carrion a:
2	Q Did you sign the copy that she showed you?
3	A Yes. May I explain, your Honor
4	MR. RIESEL: Our objection is withdrawn.
5.	THE WITNESS: Can I explain the procedure?
. 6	MR. GRAY: No.
7	(Plaintiff's Exhibit 4 was received in
8	evidence)
9	THE COURT: Only answer his questions.
10	
11	Q After you received this evaluation, did you receive this job, the student unit supervisory job?
12	
13	A No, I didn't. I went on vacation after I had the conference with Mr. Vacan
14	had the conference with Mr. Kagan, and when I came back
15	two weeks later I was told that it had been given to Avis
16	Crocker and that she had been offered \$10,500 instead of . the nine, five I was offered.
17	
18	Q What is the race of Miss Crocker? A Caucasian.
19	
20	Q Did you have any knowledge of Miss Crocker's qualifications?
21	Yes.
22	
23	. The yet that knowledge?
24	Tillst came to the hospital, Miss
25	Bemmels asked me if I would supervise Mrs. Crocker Miss
	Crocker, because she was having a great deal of difficulty

1

3

4

5.

6

7

9

10

11

· 12

13

15

16

17

18

19

50

21

22

23

24

25

with her. She said that she drank pretty heavily and that the people who were working under her were complaining about her. I asked Miss Bemmels to let me see Miss Crocker's evaluations, and she showed them to me.

Then I said, "Well, I don't want to take on the responsibility of supervising someone with these kinds of problems, because I have a very heavy schedule here in this clinic, and I really don't have thetime for that."

I asked her to please relief me of this, and she said, "All right, then."

- Q Relief you of --
- A Cf assuming supervision of Miss Crocker.

MR. RIESEL: Your Honor, we have an objection and move to strike out the testimony based on the hearsay, not within the scope of the agents --

THE COURT: Who is this person she had the conversation with?

MR. RIESEL: She had the conversation with Violet Bemmels who is an employee of Yeshiva University, but she is not authorized to make those statements whatsoever.

THE COURT: Why wasn't she authorized to get people to supervise other people?

MR. RIESEL: Yes, but under the law of the

•

MR. GRAY: I would like to say for purposes of this statement, we are offering this testimony in part or primarily to explain Mrs. Carrion's actions.

THE COURT: That doesn't make it admissible.

MR. GRAY: We are not offering -- Miss Carrion can testify that Miss Bemmels had a conversation with her about Miss Crocker. I think the real question that Mr. Riesel would be objecting to is whether or not whatever comments Miss Bemmels has made about Miss Crocker were necessarily true.

The point is that Mrs. Carrion acted in a way as a result of this.

THE COURT: Carrion's state of mind, is that what you are offering it for?

MR. GRAY: Yes.

THE COURT: If that is what it is limited to, then there is no problem.

MR. GRAY: I think your previous analysis was appropriate also.

BY MR. GRAY:

Q After Miss Crocker was appointed, did you have any discussions with Miss Bemmels about Miss Crocker's appointment?

No. Actually, Miss Bemmels told me when I

23

24

25

came back from vacation that she had been given the job.

THE COURT: That Miss Crocker had beengiven the job?

THE WITNESS: Yes, and that she was receiving ten, five. I went down and filed charges of discrimination after I learned that she had been offered \$1,000 more than I had been offered.

Q Mrs. Carrion, why were you interested in the student unit supervisor's job?

A In the field of social work, it presents an additional honor, if you will, to teach students who are working for the masters.

Q For their masters?

A Yes. This gives you --

THE COURT: Their masters degree?

THE WITNESS: In social work, yes. This gives you an opportunity to become a member of the faculty of the University, for which you would be teaching students.

Q Subsequent to your filing of the charge with the Human Rights Commission, did another student unit supervisor's position come up?

A Yes, a job in group work, and since I have training in group work case work, community of psychotherapy, I was qualified to hold that job.

2	Q Did you learn about the job at the time tha
3	it came up?
4	A I was not told that this job was available.
5.	Actually, the way I found out about it, there was a supe
6	visors meeting held at which I wasn't present, and the
7	minutes of the supervisors meeting were written up, and
8	in these minutes which I received, which all supervisors
9	receive, whether they are present or not, stated that th
10	particular position had been open by NYU in group work.
11	' Q Was Mr. Kagan, to your knowledge, involved
12	in filling that position?
13	A Yes. When I saw this in this article, I
14	went to Mr. Kagan and let him know that I was qualified,
15	and he sort of gave me a response like "Uh, huh, yes, of
16	course, we know." That is all he said.
17	MR. RIESEL: We have the same objection,
18	your Honor.
9	THE COURT: The dead man's statute.
20	MR. GRAY: I think our response is in the
21	record.
22	THE COURT: I will consider that.
3	MR. GRAY: There is the transcript of Mr.
4	Kagan's testimony

THE COURT: He said this is a job opened up

2 for NYU?

1

3

5

6

8

10

11

12

. 13

14

15

16

17

18

19

20

21

22

23

24

25

THE WITNESS: But it was at Lincoln Hospital.

NYU was placing their student units at Lincoln Hospital.

THE COURT: Why isn't Yeshiva responsible for this?

MR. GRAY: Yeshiva was in fact the person paying the salary and apparently primarily responsible for the hiring. This was the reason that New York University was carried with the case for so long because it was unclear why that situation existed.

MR. RIESEL: Your Honor, if I might interject, your Honor, at the time that Mr. Kagan was employed, the record will sow that he received 9,000 -- the witness so testified 00 39,500 from Yeshiva University and \$1,500 consideration for payment from New York University.

THE COURT: When was the job filled?
BY MR. GRAY:

Q When was the job filled?

A Shortly after that. I really am not clear on that date. But it was shortly after I had talked to him. Sometime in the fall.

Q September of '67?

A Yes. I think that's the date.

Q Who was the person who got the position?

1	1hjw	Carrion - direct	39
2	. A	Eli Levy.	
3	Q	What is his race?	
4	A	Caucasian.	
5	; 0	Subsequent to Mr. Levy's appointm	ent, did
6	Mr. Kagan	ever have any conversation with you	about him?
7	A	I think it was after Mr. Levy's a	
8	that Mr. 1	Kagan told me that he and Eli Levy we	
9	friends.		
0	. 0	But did he ever ask you to work w	ith Mr.
1	Levy ?		
2	l A	He set up an	
3		THE COURT: He said he and Levy w	ere boyhood
4	friends?		
5		THE WITNESS: Yes.	
6		THE COURT: That kind of cuts ag	ainst your
7	case.		
8		THE WITNESS: He set up a job in	the social
9	work depar	rtment called Director of Social Work	
			LOL Daucat

work department called Director of Social Work for Education and he said -- he called Mr. Levy "Professor Levy" and he said he was going to handle this job with the social work department. He said "You know much more about these areas than he does, and I want you to function as a consultant for him."

MR. RIESEL: We, of course, have the same

Hospital.

About ten to fifteen blocks from Lincoln

3

4

5

6

7 8

9

DI

11

12

13

15

16

17

18

19

21

22

23

24

25

After Mr. Kagan mentioned this job to you, did you have any discussions with any other people during the month of December about that position?

A Mr. Kagan and Mr. Silverberg called me into a conference to further discuss my taking the job. They offered me \$12,500, and in March of that year I was supposed to be making \$12,000, and the question arose around my assuming a great deal more responsibility as the Director of a program because you are responsible for the whole social work thing, plus planning and what have you, and programming, why I would only be offered \$500 more to take on about four times more responsibility than I had.

They never clarified that up, only to say that that was all the job would pay.

- Q Who held that position at the time that it came under discussion?
 - A I think her name was Evelyn Crump.
 - Q What was her race?
 - A Black.
 - Q What happened to Mrs. Crump?
- A In around the same time, I was told to go over the the neighborhood maternity center and talk to Miss Crump about the position, and I did that. She seemed a little surprised that the position was being offered to

in relation to it.

me when she had not been told this or had any discussion

I said I wanted to know, hadn't they told her anything at all, and she said, "Well, they said they were going to transfer me over to take over your job and you were going to come here and take overmy job."

THE COURT: How did she know it wasn't ... coming?

THE WITNESS: She wasn't told that she was being removed as the director, and it was sort of a hazy kind of thing. I think she said she will ask them, "Does that mean I will lose my status," and they said, "No, you are just going to be transferred."

I tried to clear it up with her by telling her that if she came to the outpatient clinic, I was doing a lot of work but it was not a definite director's job and that it would be a demotion.

MR. RIESE: Your Honor, may we have a continuing objection to what Mrs. Crump said about various sundry matters to Mrs. Carrion, although we concede that Mrs. Crump was a Yeshiva employee.

THE COURT: It doesn't seem to me that these statements were in the course of her duties as a Yeshiva employee. I grant the motion to strike.

THE COURT: Who is "we"?

18

19

20

21

22

23

24

25

THE WITNESS: Mr. Silverberg and Mr. Kagan.

Yet they transferred her anyway into Lincoln, and she

stayed there a few weeks and said she was embarassed, she

had no function, she couldn't just sit here like this, and
she resigned.

MR. RIESEL: Same objection, your honor, move to strike.

43a

1	lhjw	Carrion - direct		44
2	i	THE COURT: The embarassmen	t is out.	She
3	resigned.			
4	Q	She did leave		~
5'	A	Yes, she resigned.		
6	, O	You had a discussion you sai	d with Mr.	Silverber
7	and Mr. Kag	an in December about the posit	ion?	
8	A	Yes.		
9	Q.	And in January of 1968 did y	ou speak wi	th Mr.
10	Kagan about	that position again?		
11	A	After discussion with my cou	nsel, I the	n went
12	back to Mr.	Kagan and said, "I will take	the job at	twelve,
13	five."			
14		THE COURT: You will take th	is job	
15	i i i i i i i i i i i i i i i i i i i	THE WITNESS: At the neighb	orhood mate	rnity
16	center. Th	en I sent him a letter to that	effect.	
17		THE COURT: When you said y	our counsel	, do
18	you mean yo	or lawyer?		.6.
19		THE WITNESS: After discuss	ing the sit	uation
20	with my law	er.		
21		THE COURT: I just want to m	ake sure wh	at the
22	counsel mea	nt. It wasn't a counseling by	some organ	ization.
23		THE WITNESS: No, no, my law	yer. My la	wyer _
24	and I agree	that I would send him a lett	er saying t	his.
25	Q	Did your lawyer also communi	cate on you	r behalf?

	1			
1	lhjw		Carrion - direct	45
2	!	A	Yes.	
3		Q ·	What was your lawyer's name?	
4		A	Timothy Taylor.	
5,		Q	I show you Plaintiff's Exhibit 6. Can	you
6	identi	fy it?		
7		Α.	Yes, this is a letter Mr. Taylor wrote	to Mr.
8	Silver			
9		Q	Did you receive a copy of it or did you	ı see
10	it at		ne shortly after it was written?	
11		٠.	Yes.	
12			MR. GRAY: I move this into evidence, y	our
13	Honor,		tiff's Exhibit 6.	
14			MR. RIESEL: No objection, for whatever	it.
15	is wor	th.		
16			THE COURT: Received, for whatever it	is
17	worth.			
18		/	(Plaintiff's Exhibit 6 received in	
19		evidenc		
20		Q	I now show you a copy of a letter market	
21	Plaint		Exhibit 7.	ea .
22		A	This is my handwritten copy.	
23		Q		
24		Λ	Would you identify the exhibit?	
25	telli		It is a letter which I sent to Mr. Kaga	
	Celli	ry mant t	that I would take the job at twelve, fix	e.

1

3

6

7

8

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

MR. GRAY: I move this exhibit into evidence.

MR. RIESEL: No objection, your Honor.

THE COURT: Received.

(Plaintiff's Exhibit 7 was received

in evidence)

Q Subsequent to writing Mr. Kagan telling him that you were interested, is that what you wrote him and told him?

A Yes.

Q What did you write and tell him?

THE COURT: That's the substance of this

letter.

A Yes, that I was interested in the job and that I would take it for that salary.

Q Did you discuss with any other people at the hospital or at the neighborhood maternity center the position?

A It was after, it was sometime in March, I think, maybe February, that Dr. Smith, who was the director of -- medical director of the neighborhood maternity center, called me and asked me if I would have a conference with him about the position. He asked me to send in my resume and what have you, which I did, and I moved into the conference.

__

Dr. Smith said he was interested in my taking the position, he said, "But there is a matter that I have to discuss with you." He said, "The Einstein people are very angry because you filed charges of discrimination against them, and this is going to have to be cleared up before we will give you that position."

MR. RIESEL: We have, your Honor, the same objection, the same motion to strike, on the statement outside the authorized scope of binding statements.

THE COURT: Dr. Smith was authorized to hire this woman?

MR. RIESEL: Your Honor, Dr. Smith will testify here tomorrow and he will testify that he was authorized to make that statement -- excuse me --

MR. GRAY: Your Honor, he was authorized to make that statement.

MR. RIESEL: Our understanding of the law of New York is that you have to be authorized to make certain statements in the sense that they were -- that they bind the University. You have to be authorized to bind your employer.

We have certain cases under New York law where the statements of taxi drivers who have been in accidents have been struck out and have been found to be inadmissible

1	lhjw Carrion - direct 49
2	BY MR. GRAY:
3	Q You discussed this job in December of 1967
4	for the first time, is that correct?
5	A Yes.
6	Q Do you know when the job was filled?
7	A I think it was in May or June, 1967.
8	THE COURT: When did you say she discussed .
9	it?
10	MR. GRAY: December of '67.
11	THE COURT: It was filled May or June of '67?
12	THE WITNESS: Of '68.
13	Q Of 1968?
14	A Yes.
15	THE COURT: That was filled by a black, as
16	I understand it?
17	THE WITNESS: Yes.
18	MR. GRAY: It was filled by a black person.
19	Q Do you know what salary that person got?
20	A I think she received 15,000 or 14,000. It
21	was either 14 or 15. Actually, Miss Crump was making
22	13,000, she wasn't making the twelve, five that I was making.
23	This woman received 1,000 more, so it must
24	have been 14 that she received.
25	Ω Had you dropped your charges before the Human
	John Jour Charges before the Human

	ű	
1	lhjw ·	Carrion - direct 50
2	Rights Comm	mission at that time?
3	. A	No.
4	Q	Did you subsequently amend your charges
5	A	To include that position.
6	, 0	You did?
7	A	Yes.
. 8	Q	I show you Plaintiff's Exhibit 8 for identifi-
9	cation.	The state of the s
10		Would you identify that, please?
11	A.	This is the amendment.
12	Q	What is the date on that?
13	A	December 4th.
14	. 0	Is this a copy of your amended charges?
15	. A	Yes.
16		MR. GRAY: I would like to move that in
17	evidence.	a would like to move that in
18		MD DIECEL No object
19	1	MR. RIESEL: No objection.
20		THE COURT: Received.
21		(Plaintiff's Exhibit 8 received in
22	evider	
		(Recess)
23		
21	I have	

-			
-	n	-	4.7
4	h		w

3

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Carrion - direct

52

2 in evidence)

THE COURT: this an unfavorable evaluation, this one?

MR. GRAY: No, it is favorable.

THE COURT: I was just remembering a comment you made.

MR. GRAY: I was talking about one that didn't get into evidence.

Q Mrs. Carrion, subsequent to this, in the spring of 1969, were your charged heard before the Human Rights Commission?

A Yes.

Q In October of 1969 did you receive a memorandum from Mr. Silverberg?

A Yes.

Q I show you Plaintiff's Exhibit 10 and ask you if this is that memorandum?

A res, this is it.

Q What was the subject of the memorandum?

A My suspension.

MR. GRAY: I move the admission of Plaintiff's Exhibit 10.

MR. RIESEL: No objection.

THE COURT: Received.

(Plaintiff's Exhibit 10 was received in evidence)

Q Mrs. Carrion, after you received that memoran dum of October 28, 1969, what did you do?

A I am and was a member of the National
Association of Social Workers, and I called them on the
telephone and talked to what they call the Grievance
Committee, a man who headed this, and I read the suspension
to him, and he asked me who was Mr. Silverberg, and I
said "He is the liaison officer for the Einstein College."

He said, "Is he your immediate supervisor, did he have anything to do with hiring you," and I said, "No," and he said "Then he can't suspend you, so go back and continue your work."

I did this, and then I decided to send -he suggested that I send a letter -- this was it. He
suggested that I send a letter to the administration
there at the hospital to get clarification at Lincoln
Hospital.

Did you do so?

A Yes. Clarification about Mr. Silverberg's role.

Ω I show you Plaintiff's Exhibit 11. Is this that letter?

	l. Injw	Carri	on - direct		. 54
2	A Yes	this is	the letter	sent to Dr	. Ira
3	Lubell, who was	the execut	ive director	at Lincoln	Hospital
4	at the time.				4 1
5.	MR.	GRAY: I	move the adm	mission of P	laintiff'
6	Exhibit 11.				
7	MR.	RIESEL:	No objecti	lon.	
8	THE	WITNESS:	Copies wer	re sent to o	ther
9	people.				•
10	THE	COURT: I	t says so or	the copy.	
11	Q Let	me show yo	ou Plaintiff	's Exhibit	11
12	THE	COURT: I	can read it		
13	MR.	GRAY: I	just wanted	to identify	who the
14	people were in te	rms of the	eir position		
15	Q Who	was Mr. Ar	dre Walker?		
16	A The	assistant	commissione	r.	
17	Q Assi	stant comm	issioner of	the hospita	11?
18	A Of t	he hospita	l, related	to social wo	ork.
19	Q Who	is Dean Gl	aser?		
20	A He w	as an Eins	tein Colleg	e administra	tor.
21	. Q Who	is Mr. Jos	eph Kaye?		
22	A As I	understoo	d it, he wa	s the direct	or of
23	personnel for Ein	stein.			
24	Q And	Mr. R. Kag	an?		
25	Λ Kaga	n was the	director of	social work	. Then

MR. RIESEL: No objection.

23

(Plaintiff's Exhibit 12 received in

24

evidence)

25

THE COURT: Whom did you consult in writing

contact with Mr. Silverberg?

23

24

25

Actually, there were some questions in relation to my

54a

I had had no contact with Mr. Silverberg.

1

2

5

7

9

10

12

14

15

17

18

19

20

21

22

24

25

salary because the were sums of money that some of the people in my position or my capacity received which I didn't receive, and I sent a memo -- I called a couple of times, I didn't write a letter, I called a couple of times to Mr. Silverberg's office, to talk about these monetary matters, because from what I had been told Mr. Silverberg was the person who handled the money. This was his jurisdiction.

Q You had contact with him previously with regard to the neighborhood maternity center.

A This was with Mr. Kagan present who was really leading the situation.

Q You testified earlier that you had contact with him --

A But Mr. Silverberg was discussing in that conference strictly money. He wasn't discussing anything at all with me in terms of whether I was qualified, could I do the job, or what have you. That kind of discussion was handled by Mr. Kagan.

When Mr. Silverberg's conversation with me took place, it was \$12,000, that is all they could pay, and the budget.

Q You also had conversations with him, you testified, you think you can recall --

3

•

5

6

7

9

10

11

12

13

15

16

17

18

19

20

21

22

23

24

25

MR. RIESEL: Your Monor, that is an objectionable question, leading the witness, paraphrasing the witness' prior testimony. I don't think there is any need to do that.

THE COURT: Sustained.

Q Do you recall whether you had contact with Mr. Silverberg when you were discussing your change of payroll status from Einstein to Yeshiva?

A rom Einstein to City?

Q I am sorry, from Einstein to City.

A Could I clear this up, your Honor, and state that the only --

THE COURT: You can try.

A -- the only conversations which I ever had with Mr. Silverberg were related to money, finances.

The COURT: How many did you have, all together with Mr. Silverberg?

THE WITNESS: I think I had one when there was the transfer over to City and back, and then there was the one about twelve, five. That was all. Three --

THE COURT: Two?

THE WITNESS: Two.

Q Did you have contact with him about paycheck matters?

5,

A No. He never kept those appointments, you see. This is what I started to say before. He never kept those appointments. I called him and made appointments with his secretary, and I would go there to his office and wait for 45 minutes one time and an hour one time, he never showed up, he never called to say he couldn't keep this appointment. He just wasn't there.

So after about two or three of these things,
I just gave up.

THE COURT: What were these things?

THE WITNESS: They related to salary discrepancies where some of the people had gotten certain sums of money and I had not gotten them, and when I talked to Mr. Kagan about it, he said, "Mr. Silverberg is the man who handles the money, you have to see him."

Then I called him, his secretary, and I said,

"Could I have an appointment to talk to him," and I told
her what it was about. She would give me the appointment,

I would go to his office, he would never show up. Neither:

did he call me to say "I can't keep it" or "Please stop

calling me." Just, you know, that was it.

Q In the month prior to your receiving this memorandum of October 31st had Mr. Silverberg contacted you in any way other than in earlier memoranda, the

2 to M

to Mr. Kagan's activities with the secretaries, and it had to do with his attempting to put his hand under one of their dresses or some kind of approach in that area.

I said to her "How many people are talking about this," and she said, "Well, most of the social work department is buzzing about it."

I said, "Well, this is a terrible thing to be talking about a director." I said, "Is there any truth to this?"

She said, "Well, I don't know." Mrs. Vasquez said, "He has made passes at me."

I said, "I think what you ought to do, instead of keeping this going, why don't you and I talk to this girl who is circulating this report and see if we can get some truth out of this and have her either stop it or instead of circulating it take some action about it."

So she talked to the girl and she came to see me.

THE COURT: Who, the girl?

THE WITNESS: A young woman, she was in her twenties.

THE COURT: You said she talked to her and she came. One person talked and the other person came.

Who talked to the girl?

3

My social worker, Freda Vasquez, talked to Shirley Sanchez.

5

6

you?

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

THE COURT: And Shirley Sanchez came to see

THE WITNESS: Came to see me along with Mrs. Vazquez. Shirley Sanchez repeated the statement that Mr. Kagan had made these passes, that he had attempted to put his hand under her dress.

I said to her right then and there, "Now, this is really serious, and I don't want to be the one to handle anything like this. What you better do is come to me with Dr. Lubell," that was the executive director of the hospital, "and tell this to him."

I called his secretary on the telephone and asked if we could see him, she said yes, "But you will have to see him, you will have to wait. He is seeing someone else."

We waited outside his office for 45 minutes to an hour waiting for him to come. When we finally went in to see him, Shirley Sanchez told him the same identical story she told me.

He said, "This is very, very serious," and he was going to have to look into it. At that point he

7 8

couldn't say what he was going to do about it but he was going to look into it.

Q Subsequent to this did you circulate within the department a memorandum --

A No. Let me lead up to that, if you will.

When we went outside, I said to Shirley,
"Would you be willing to put this in writing and sign it?"

She said, "Yes." You know, "If your

secretary will draw it up or somebody will draw it up and put it in writing, I will sign it."

So Mrs. Vazquez dictated what she had said to the secretary, and Shirley was to come back and sign the memo.

She came back about two days later. She took the memo. She read it, and she said -- she corrected something in there, a matter of semantics, she said it was this way instead of that way, so then she corrected this.

Then she said to me "Can I have a copy of this?" She said, "I don't want to sign it right now, I want to think about it. Can I have a copy of this?"

I said to her, "It is your memo, it's your statement. This is what you said happened. This is what you told Dr. Lubell. You are entitled to a copy of it.

Take it."

Then the next thing I heard, they had turned the thing completely around and said that Ihad written this up and I was circulating it.

THE COURT: Who is they?

THE WITNESS: This was some of the people in the social work department.

THE COURT: Some of the people in the social work department turned it around, and what?

didn't even know this whispering was going on until one of the people who worked there in the mental health services came to me and said to me, "Do you know that the people in the social work department are circulating a memo saying that you are unethical and unprofessional and getting people to sign saying that you should be discharged."

I said to him, "You have to be kidding," and he said no, this is what's going on.

I said, "Who is circulating it?"

He said, "There is a woman who works for 1199
Paul Ricardo, she is a union representative and she really
has no business doing this, but she has this memo and
she is circulating it and she is trying to get people to
sign it."

So I went to her about a day later, I couldn't find her that day, I went to her a day later, and I said to her "Could you let me see a copy of whatever this is I hear you are circulating against me?"

She said, "Oh, you have to be kidding. I am not circulating anything."

I said, "Well, let me see a copy of it because people who are not liars have told me this. May

I just see a copy of it. I am not going to take it and

I am not going to do anything. I just want to see what,"

and she said "Oh, no," and walked away.

Then I asked two of the workers in my unit to ask her to let them see it. She refused to let them see it or anyone whom she felt might be friendly towards me see it.

THE COURT: Did you ever get a hold of this memo?

never shown to me. It was never discussed with me by the Einstein administration by whom I was employed.

Q Have you seen copies of it subsequently during the Human Rights Commission?

A No. The only thing I saw a copy of was the report which the secretary typed up which my worker dictated

4

5.

6

7

9

10

11

13

14

16

17

18

20

21

23

24

25

which Shirley had said. I never saw the memo they circulated which had the signature on it and which was calling me unethical, and what have you.

THE COURT: What did they tell you you had done that was unethical?

THE WITNESS: They never told me.

THE COURT: The person who told you about the memorandum, what does she say about it?

THE WITNESS: This man, he said that he had not seen it but he knew they were circulating it because people who knew about it had told him.

THE COURT: What had they told him your supposed unethical contact was?

THE WITNESS: I guess maybe a couple of weeks later I asked Andre Walker, the assistant commissioner in charge of social work, to call a hearing on this, I said, because the social work department is involved in this conspiracy wasting the City and College time with this kind of thing and neglecting patients.

I said, "From what I understand the three or four -- three Caucasian supervisors are involved in this. I have asked to see this memo. No one I know has seen it. I want a hearing on this to make them stop this kind of thing or produce this memo and make some charges."

So Mr. Walker called this hearing. All of the people who were involved were called in on it. It moved into a situation where'y they began to talk in terms of this man called Cartichak was the one who said he was walking lown the hall one day and Shirley Sanchez walked up to him and said, "Oh, Mr. Cartichak, something terrible has happened. Mrs. Carrion is trying to blacken Mr. Kagan's name. She is circulating things about him that are terrible. I need your help to find out what to do."

I said to Mr. Cartichak, I said, "Miss Sanchez had nothing to do with you, she never talked to you, as far as I know, and she was not typing your work. So why would she be suddenly walking up to you, a stranger, and presenting this kind of tale?"

He never answered it. He just sat there.

So the other people who came in on this thing began to say, you know, that it had happened one night when they called all the supervisors and the social workers together and they had this conference and they talked to the woman who was acting director while Mr. Kagan was gone.

She sent them to Mr. Silverberg to tell Mr. Silverberg this story.

THE COURT: Then I gather that the story they

15 .

told was that you were blackening --

THE WITNESS: Mr. Kagan's name.

THE COURT: That's what I wanted to find out

THE WITNESS: In other words, they had reversed

the whole thing.

THE COURT: All I wanted to find out is what you just told me.

BY MR. GRAY:

Q Mrs. Carrion, do you know whether an investigation was ever carried out by Mr. Silverberg regarding this controversy?

Walker, whom I went to and insisted that he do this, carried out any investigation. He told me then and there in this hearing that they were to stop circulating this petition, whatever it was, that if they had charges to bring against me, they should bring them against me and present them to him since he was the administrator in charge of social work, because my first question to Cartichak, "Why didn't you take this to Mr. Walker who was the administrator in charge of social work instead of Mr. Silverberg who has charge of finances?"

They never answered that, your Honor.

Q Do you know whether an investigation was ever

THE COURT: Any objection?

24

25

time.

1	lhjw	Carrion - direct 70
2		MR. RIESEL: Oh, yes.
3		MR. GRAY: I withdraw my offer.
4	Q	Mrs. Carrion, subsequent to your firing, did
5	the Human Ri	ghts Commission hear your case?
6	. A	They heard my case and they ruled
7	Q	Did they issue an order in your favor?
8	Α .	They ruled against the Einstein College and
9	they ordered	me reinstated with full retroactive pay.
10	Q	You returned to work subsequent to this order?
11	A	Yes. I had to call the commission two different
12	times before	the Einstein College notified me to return.
13	They attempt	ted to ignore it, very frankly. Then I called
14	Mr. Rudder a	and he got a hold of them and they had me
15	returned.	
16		MR. RIESEL: I mov to strike that last
17		THE COURT: That's the witness' conclusion.
18	1	MR. RIESEL: Can we have it stricken, your
19	Honor?	
20		THE COURT: It is stricken.
21	Q	I show you Plaintifff's Exhibits 14, 15 and
22	16.	
23		Would you identify them, please?
24	A	The first one, 14, is a letter that I sent
25	to Dr. Lube	ll, the executive director, asking to be given

2 Not if it i

Not if it is offered as a response.

MR. GRAY: I believe the characterization was made with respect to Exhibit 15 and not as to 16.

THE COURT: This doesn't seem to me to be a response to 14.

MR. GRAY: Exhibit 15 is the response received by Mrs. Carrion to Exhibit 14. Exhibit 16 is an internal remorandum that is in reference to the position but not to --

THE COURT: Received.

(Plaintiff's Exhibit 14, 15 and 16 were received in evidence)

- Q Do you know Miss Miller?
- A Miss Carrie Miller, yes, I know her.
- Q Do you know whether she is still at Einstein .
 College?

A The Einstein College, yes, they have not replaced the director of social work since Mr. Kagan resigned. Miss Miller -- your Honor, for the City, is a Supervisor 2. She holds a technical position of Supervisor 2. She is not a legitimate director of social work, she is not qualified to direct a social work department.

Q Why do you say --

2

3

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Because she doesn't have New York State Certification.

THE COURT: So she is acting director? THE WITNESS: Yes, and she has been acting since 1970.

THE COURT: What is her race?

THE WITNESS: She is black.

MR. RIESEL: We will move to strike the testimony that she was not qualified. There is no foundation for that.

THE WITNESS: Yes, there is. I have the qualifications for that job in my office, and she doesn't meet them. I can produce them.

THE COURT: You are not established as an expert for that purpose. The motion to strike is granted.

Einstein College appealed your reinstatement to the State Court, is that right?

Yes.

Were you a party to that appeal?

No.

Were you aware of it at the time it was filed?

No. I was not told about it. I was not notified of it.

1

3

5

6

7

8

9

10

11

12 13

14

15

16 17

18

19 20

22

21

23

24

25

THE COURT: How did you find out about it? THE WITNESS: One of the people, one of the community people, called me one day and asked me if I knew ___ they had done this, and I said no.

THE COURT: Isn't there some procedure for letting the affected people know about it?

MR. GRAY: Not to my knowledge. I would assume so, but --

THE COURT: It seems rather extraordinary.

MR. RIESEL: It also seems extraordinary, the plaintiff was represented by apparently very competent counsel throughout these proceedings.

THE COURT: What?

MR. RIESEL: Plaintiff was represented by fairly competent counsel.

THE COURT: But if competent counsel never knew abou it, what could he do about it?

THE WITNESS: Mr. Taylor was not at any of those, Mr. Riesel. You better be --

THE COURT: How could you move to set aside an order involving a person without letting that person know?

MR. RIESEL: Your Honor, I would say that it is probably one of the more preposterous things that

an Article 78 proceeding attacking a decision made by -obtained by Mrs. Carrion's lawyer wound its way through
the Supreme Court, the Appellate Division and the Court of:
Appeals, but almost with precision, an EEOC complaint
was filed within the statutory period.

I have a suspicion also, I don't mean to say anything sinister at all, that Mr. Timothy Taylor was associated with the same eleemosynary organization which is active in Mrs. Carrion's defense at this time, the Legal Defense Fund.

MR. GRAY: That is not true. That is incorrect. First of all, I would like to ask Mr. Riesel to state that an EEOC charge was filed at that time.

THE COURT: Didn't you notify --

THE WITNESS: No.

THE COURT: -- the plaintiff's attorney --

MR. RIESEL: Your Honor, I can give you a very definitive answer to that in the morning. As you know, I am not in the general counsel's office who was representing the Yeshiva University throughout the administrative proceeding and the subsequent proceeding.

after a year and a half of time that plaintiff's counsel wasn't aware of it.

it.

THE WITNESS: Mr. Taylor stopped functioning for me as counselor after that case was won and actually the lawyer who appealed that case was Lee Rankin. Mr. Taylor did not appeal that first decision.

THE COURT: Mr. Taylor won appeal. He won

THE WITNESS: Right. But I mean when they won that reversal in the City Court, the appeal to that reversal was made by Lee Rankin, because the community walked into City Hall and insisted that Mr. Rankin make that appeal.

THE COURT: Then you must have known about it at that point.

THE WITNESS: At that point. This is after the decision had been made. But I did not know about it prior.

MR. GRAY: Mr. Taylor was associated with the NAACP at the time he was representing Mrs. Carrion, which is an entirely separate organization from the Legal Defense Fund with which I am associated.

THE COURT: They have the same office, don't they?

MR. GRAY: No.

THE WITNESS: They are two different

lhjw	Carrion	-	direct
-	Cultion		arrece

2 organization.

1

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

MR. GRAY: We are entirely different. are a spin-off in approximately 1954.

THE COURT: I knew that. But I thought you were all on Columbus Circle.

MR. GRAY: They are across the street.

THE COURT: But on Columbus Circle.

MR. GRAY: That's right.

THE COURT: That is where I am confused.

MR. GRAY: They are in the neighborhood but we are in separate buildings.

MR. RIESEL: Your Honor, then I will, of course -- that's the basis for my statement, and I refused, and I don't think any harm was done, they are both distinguished organizations.

THE COURT: It is beside the point because the State judgment isn't binding on my anyway. It just seems to me strange that she wouldn't know.

BY MR. GRAY:

I show you Plaintiff's Exhibit 17 which is marked as being from the file of Odessa Carrion.

Have you ever seen it?

No.

I show you Plaintiff's Exhibit 18. Would

2

3

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

MR. GRAY: I offer Plaintiff's Exhibit 17 in evidence.

MR. RIESEL: No foundation for that document.

Your Honor, 17 is --

THE COURT: I have 18. What is 17?

MR. RIESEL: 17 is a document marked for identification. The plaintiff has just testified she never saw 17 for identification.

I don't think it is proper foundation for it, at least at this time.

THE COURT: What foundation do you have for this?

MR. GRAY: I offered it to the plaintiff, she had

not identified it. I will use it at a later point. We

will offer it at a later point.

THE COURT: Objection sustained.

MR. GRAY: It was obtained, I believe, from the defendant's files.

BY MR. GRAY:

Q After you were discharged, what action did you take?

A The NAACP filed in the Federal Court. I called them.

Q The NAACP --

A I'm sorry, I get it mixed up, too. I called the

5 6

7 8

9 10

11

12

13 14

15

16

17

18

19

20

21

22 23

25

Legal Defense Bureau. In fact, I had been discussing this with a Mr. Robinson, Bill Robinson, who was working there.

Did you also seek other employment?

During the period when I was unemployed, I did, but actually, your Honor, from June until September is a very difficult time to seek employment because professional people are on vacation and they are not about to leave jobs until they take their vacation and come back.

So seeking employment during that period was difficult, but I did do it.

I show you Plaintiff's Exhibit 20. Would you identify that?

Yes, this is a letter I sent to the Assistant to the District Superintendent of District 9 about a job as director of a drug treatment program for children.

Could you speak up a little?

It was a letter I sent to the District Superintendent of District 9 about a job as director of a drug treatment program for children.

MR. GRAY: I move this into evidence.

MR. RIESEL: No objection.

THE COURT: Received.

(Plaintiff's Exhibit 20 for identification received in evidence.)

3

4

5.

6

7

_

9

11

13

15

16

17

18

19

20

21

22

23

25

Q Where?

A My present job is Director of Social Work for the Hospital Corporation, and I obtained that in October of 1971, the end of October.

- Q In October of 1971?
- A About the last week in October of 1971.
- Q Was there any criticism of your appointment, to your knowledge?

Russell, who was then working for the Einstein College of Medicine who had been my previous supervisor at Lincoln Hospital, led a delegation of directors of social work down to central office to Dr. English's office to object to his having hired me, starting off by saying I wasn't qualified, and he showed them that I was, then protesting that they had given me this job without asking them, and he told them that he didn't have anything in his contract that said he had to ask anybody who he could hire.

Therefore, he was free to hire whoever he pleased. Then some of them said, "If she stays, we are all going to resign."

THE COURT: What's this got to do with this case?

THE WITNESS: This is harassment, because this

man worked -- the man who led this group down there --

1

THE COURT: Do you contend that he had authority from Yeshiva to do this?

4

3

MR. GRAY: Yes.

5

THE COURT: What evidence have you got of that?

6

Mrs. Carrion?

7

A What happens?

8

9

THE COURT: What evidence do you have that this doctor had authority from Yeshiva --

10

MR. GRAY: It wasn't a doctor.

11

THE COURT: What evidence do you have that he had authority from Yeshiva to do this?

12

13

MR. GRAY: He was an employee of Yeshiva.

14

THE COURT: I understand that. Does Yeshiva give

15

its employees standing authority to go conduct demonstrations

16

MR. GRAY: No.

wherever they want to?

17

THE COURT: It seems to me this is inadmissible,

19

unless you can show that he had authority from Yeshiva to do

20

21

that.

THE WITNESS: I could say that he couldn't very well go ahead and do it if they told him not to do it.

22 23

THE COURT: I notice you did some things they told you not to do. Why couldn't he?

24

Q I would like to show the witness this evaluation

1

3

4

5

6

8

9

10

12

13

15

16

17

18

20

21

22

23

24

25

A Yes, this is the evaluation Maurice Russell gave me, when I worked at Harlem Hospital.

MR. GRAY: This is the evaluation I attempted to produce in the earlier portion and Mr. Riesel objected to it for relevancy at this point.

I would like to offer it.

that was Plaintiff's Exhibit 2 and offer it.

MR. RIESEL: Your Honor, I have never spoken to
Maurice Russell. I am prepared to subpoena him. I
understand he is an employee of the City of New York. I am
prepared to subpoena him and have him here.

But aside from that, I don't see any foundation for these documents coming in.

THE COURT: Who is Maurice Russell?

MR. GRAY: He is an Einstein employee --

THE WITNESS: No, he isn't any more.

MR. GRAY: He was at this time.

THE WITNESS: At the time he brought the delegation down there, he was their Director of Social Work, and they had formed an organization called the Directors of Social Work for the Health and Hospital Corporation, and through this organization, he brought this delegation down to central office.

THE COURT: I don't see that there is any evidence

you were in ormed that the job would only pay \$9,500; is that right?

20

18

19

A Yes.

21 22

And you were told that the \$1,500 supplement from New York University would no longer be available; isn't that right?

23

Yes. Could I add?

24 25

No, I don't think so.

THE WITNESS: There is no 146 here.

25

MR. RIESEL: All right, I have made a mistake and

2 I will have to go on, your Honor.

Q When you went down to see Professor Leon at

New York University in the spring of 1967, you inquired

about any suitable job, whether it was at Lincoln Hospital

or at other institutions in the City; isn't that correct?

A I was exploring with him New York University's possibilities.

Q And you explored with him an opportunity with the Head Start Program; isn't that correct?

A Yes.

Q And you also talked to him about a job at Lenox Hill Hospital; is that correct?

A This was in the process of exploration. He was introducing these areas where New York University had student units and he was discussing these with me.

Q Another student unit supervisor's position became available some time after July 1st; is that correct?

A Yes.

Q And you found out about this job because it was relayed to you through a memo that was sent around to various units indicating that the position was available; isn't that right?

A No.

THE COURT: Isn't that what you said?

22 23

THE WITNESS: No, I said that the supervisor's meeting minutes were past around. I think Mr. Kagan said originally there was a special memorandum sent around to all the supervisors saying this job was available, and this was a memo I did not get.

THE COURT: It was not the minutes that you got.

THE WITNESS: It was in the supervisor's minutes, a meeting which I did not attend.

THE COURT: I see.

Q We have had some mixup on pages but I think I have got things straightened out now.

Do you recall testifying before the Commission on Human Rights to the effect that"this position was relayed to me through a memo that was sent around to the various units that this position was available, this position was made known to me through a memo that was sent?" The memo stated NYU was opening up a second position, student unit supervisor position in group work.

Do you remember testifying as to that effect?

A No.

Q Would you look at page 71 of Defendant's Exhibit
R for identification?

A In this memo I was referring to the supervisor's minutes.

и	e	٠.		
	7	,		
4	6			

3

5

6

7

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

MR. RIESFL: I move to strike out respondent's answer as not being responsive to the question.

THE COURT: All right.

- My question simply is, do you remember giving that testimony?
 - No.
 - You do not recall giving it?
- Not this kind, no. I remember saying that I learned about this through a -- this was a memo, incidentally, the supervisor's minutes, but it was through the supervisor's minutes that was written in a memo and sent to all the supervisors and this was a meeting that I did not attend.
 - Mrs. Carrion --

THE COURT: Is there any major difference? Is there any major significance in this difference? MR. RIESEL: Well, I don't really -- that remains to be seen, your Honor, as we go along.

THE COURT: All right.

Mrs. Carrion, do you recall giving the following testimony?

THE COURT: Give her the page.

Page 17. Did you testify, "I wanted to see if I was going to be consulted about this because I had qualifications in group work as well as in community

1

4

5

7

8

10

11

13

14

15

17

18

19

21

22

24

25

organization as well as in case work as well as in psychotherapy. So I waited to see if I was going to be
approached about this, and I was not. Then I came down and
I filed another statement in relation to it. Then in
October, Mr. Eli Levy was brought in and given this position."

Do you recall that testimony?

- A I recall that.
- Q That was the testimony you did give, I take it?
- A That I waited to see if Mr. Kagan --
- Q Can you answer that question?
- A Yes, I waited to --
- Q Thank you.

Now I am going to see if I can find that page which I mis-cited, and if I can do it expeditiously.

If not, I will move on, your Honor.

THE COURT: Not to circumscribe you but how long will you be? How long will the rest of the case take?

MR. RIESEL: It looks like it will be Friday.

THE COURT: It won't be Friday because I am not going to be here.

MR. RIESEL: It won't be Friday.

THE COURT: No.

MR. RIESEL: Plaintiff has four witnesses, your Honor, to follow.

seen it.

Q Mrs. Carrion, it is only to refresh your memory as to the time that you left the City employment.

A Actually, I was hired to work for Einstein and not the City; and this going on to the City partially so that the Einstein College could collect a beginning social worker's salary was something that they did throughadministration, with which I had nothing to do.

Q Mrs. Carrion, did you receive all your compensation from Albert Einstein College of Medicine after a day in March 1967?

A Yes.

Q And prior to that, you were receiving a substantial portion of your compensation from the City of New York, isn't that correct?

A That was at the Einstein suggestion, yes.

Q Now in December, 1967, I take it that you and Mr. Kagan and Dr. Nasry Michelin went to Mr. Silverberg's office to talk about a job in a neighborhood maternity center, is that correct?

A That is not how it was. May I explain?

Q No, I think you have told me that is incorrect.

Did there come a time when you, Mr. Kagan,
Dr. Michelin and Mr. Silverberg met in Mr. Silverberg's

17 18

19

20

21

22

23 24

25

Carrion-cross

130

the director of social service at Lincoln Hospital?

A I never had any such conversations with a case aide, Mr. Riesel.

0 You testified you spoke to Miss Shirley Sanchezon or about September 1969; is that correct?

A Yes.

THE COURT: I didn't get your question. Testified where?

MR. RIESEL: That she spoke to a Miss Shirley Sanchez on or about September of 1969; and you initially spoke to Miss Sanchez in your office; isn't that right?

THE WITNESS: Miss Vasquez, my worker, brought Miss Sanchez to my office.

THE COURT: The answer is yes.

Yes.

Then you and Miss Sanchez went to Dr. Lubell's office, is that correct?

A Yes.

And Miss Sanchez made a statement before Dr. Lubell, is that correct?

Yes.

On about September 25, 1969, you prepared a statement for Miss Sanchez to sign; isn't that correct?

A The secretary did.

When you saw that typewritten statement, was that typewritten statement an accurate representation of what Miss Sanchez had said to Dr. Lubell?

131

A Yes.

11

13

14

15

16

17

18

19

20

21

22

23

24

25

I have marked as Defendant's Exhibit I for identification a two-page document or I should say to describe it more accurately, two pages consisting of reproduction of a memorandum and what purports to be a typewritten statement, and I would like to show it to you and ask you if you have ever seen the second page or the original of the second page?

This was the statement that was typed.

And this was a statement that Miss Sanchez refused to sign, I take it?

A She did not refuse to sign it. She said she wanted to take it, could she have a copy. She wanted to take it and think about it. This is what she said.

3

4

1

5

6

7

8

9

10

11

12

13 14

15 16

17

18

19

20

21

22

23

24

25

She didn't tell me, "I will not sign this statement."

She says, "Yes, this is the statement. Let me take it. I want to think about it."

Because she even made a correction in the statement.

Does the second page on Defendant's Exhibit I for identification purport to be -- excuse me -- is it an accurate representation to your memory and recollection of what Miss Sanchez said to you on or about September 25, 1969?

A It is.

Did Miss Sanchez ever refuse to sign such a statement?

A Miss Sanchez never came back to me with that statement at all.

Do you recall going to Miss Sanchez and asking her to sign that statement?

A No, no.

You didn't?

After Miss Sanchez took that statement out of my office, there was no more communication between us at all.

Do you know a man called Manuel Mathews?

Yes.

Q Did you direct Mr. Mathews to go to Miss Sanchez and direct Mr. Mathews to have her sign the statement?

A I did not.

Q Did you ask Mr. Matthews to get Miss Sanchez to sign the statement?

A I did not.

Ω Do you recall telling Miss Sanchez that she should act as a good citizen and "stick with my people, the blacks and Puerto Ricans, and not the whites"?

A I don't recall that.

Q Do you recall Miss Sanchez giving testimony in the Commission on Numan Rights?

A I recall Miss Sanchez giving testimony and stating whatever went on between Mr. Kagan and me was our business.

O Do you recall Miss Sanchez testifying that you approached her and said, "Act as a good citizen and stick with my people, blacks and Puerto Ricans and not the whites."

A She might have given that time but I didn't tell her that.

THE COURT: What relevance is it here what Miss Sanchez testified?

MR. RIESEL: Well, your Honor, I think there is some relevance, and I think I am going to leave this subject now, and I would make a side bar offer of relevance but I would not like to do it in the middle of this examination.

Q Did Miss Sanchez ever tell you that she did not

want to be involved because she was suffering from diabetes?

A No. There was no contact between Miss Sanchez and me after she took that memo which she had dictated and left my office.

THE COURT: You say she dictated that memo.

THE WITNESS: These are the statements she gave me and Mrs. Vasquez.

THE COURT: But she didn't dictate this memorandum?

THE WITNESS: No, Mrs. Vasquez wrote them and gave them to the secretary.

THE COURT: I know but this doesn't purport to be anything but what Miss Sanchez said; it purports to be what you said.

THE WITNESS: Well, it is what I said she said.

THE COURT: But this memorandum couldn't have been dictated by Miss Sanchez because it doesn't purport to be her memorandum, it purports to be your memorandum.

THE WITNESS: No, what I was saying, your Honor, is that this is what Miss Sanchez told me.

THE COURT: All right, but you said she dictated this memorandum and she couldn't have.

THE WITNESS: I used the wrong word in dictate.

MR. GRAY: Your Honor, I think she said the memorandum was prepared by Mrs. Vasquez.

1

3

4

5

6

7

8

9

10

11

12

.

13

14

15

16

17

18

19

20

21

22

23

24

25

THE WITNESS: It was typed by the secretary.

Miss Vasquez took the information to the secretary and had her type it.

THE COURT: But this couldn't be anything except her memorandum.

"I sent for Mrs. Sanchez the same day. I took Miss Sanchez keys." How could Miss Sanchez have prepared it?

THE WITNESS: She took it to the secretary to type as a memorandum that I had given her.

THE COURT: Then it was your memorandum not Mrs. Sanchez' memorandum that was the point.

THE WITNESS: Actually it is not her memorandum, you know, because she didn't --

THE COURT: It is your memorandum.

THE WITNESS: Yes.

THE COURT: That is what you were denying when he asked you. Listen to the questions.

Proceed.

Q I think we went over this ground at some length in your deposition. I asked you about the leave that you took from employment during -- the vacation leave during the summer of 1969. You recall those questions, don't you?

A You mean in the pre-disposition?

Ω Yes.

1

in an examination in this case?

3

that.

5

6

7

9

10

11

12 13

14

15

16

17

18

19

20

21

22 23

24

25

I recall the testimony but I don't recall saying

O Do you recall -- I'd like you to look at page 146. of your testimony on that date, and I ask you if that refreshes your recollection as to your testimony previously given.

. MR. GRAY: Could you be more specific as to what passage? I think you characterized the passage, and I am not sure what the characterization --

THE COURT: He just asked her to refresh her recollection.

MR. RIESEL: The whole page.

(Pause.)

Well, this was -- this statement here where I said I was angry, he was sitting there trying to convince me that this was all they could give me, and I got up and left. This statement doesn't mean that I got up and left in an angry --

- Mrs. Carrion --
- A It means that I was just --THE COURT: He just asked if you gave it. -
- Did you give that testimony? Q.
- A Yes.

"0

"A

Walked out?

Yes."

this was all they would give me, and I got up and left.

2

1

3

5

6

7

8

9

10 11

12

13

14

15 16

17

18

19

20

21 22

23

24

25

THE WITNESS: But it states that I was angry at his trying to convince me, not that I was angry and left.

THE COURT: I see, all right.

THE WITNESS: You are reading into the statement.

THE COURT: It is up to me what is read into the statement; not nim.

MR. RIESEL: I have no further questions of the witness at this time, your Honor.

THE COURT: Any redirect?

MR. GRAY: Yes, your Honor, a few questions.

THE COURT: What about this plaintiff's --

MR. GRAY: Off the record, am I correct that Mr.

Riesel didn't put in any documents into evidence?

MR. RIESEL: No, I did not.

THE COURT: You did what?

MR. RJESEL: I did not put those exhibits into evidence.

THE COURT: What exhibits are you talking about?

MR. GRAY: He showed Mrs. Carrion a number of exhibits but I was just making sure that none had been moved into evidence.

1

3

4

5

6

7

8

9 10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

THE COURT: I don't remember them.

MR. RIESEL: I did not offer them.

REDIRECT EXAMINATION

BY MR. GRAY:

Mrs. Carrion, I have about five questions I would like to ask you.

When you went down to see Professor Leon, what was the purpose of your trip?

- To explore with him the possibilities of student unit supervisor's positions at Lincoln or wherever NYU had them but basically Lincoln.
 - Did he mention these other positions?
- He mentioned these others because there was no way of my knowing.
- You had contact with Mr. Silverberg or his office Q while you were at Lincoln regarding what matters?
 - A Only regarding finances.
 - Payroll?
- Payroll, and monies that other supervisors had gotten that I hadn't gotten and --
 - Q Salary?
 - Salary, but just finances.
- When you were changed from Einstein -- I'm sorry, from partial City payroll to the Einstein payroll, were

A No. They were the same.

there any changes in your duties?

- O Did you make arrangements when you went on vacation to have your position covered?
- A Usually Mrs. -- actually, the agency, which would have been the Einstein College, is supposed to have a person to replace you when you take vacation leave, especially if you are a supervisor or a director.
 - Ω Did you give notice?
 - A Yes.
 - O Before you took your vacation?
- A Yes, but they never had a person to replace me ever. When I came back the work was piled there and all the messages and what have you, you see.
- Would you explain the statement that was shown to you about Miss Sanchez that has your name on it? Could you explain to us what the purpose of it was?
- A Actually, the purpose really -- one of the things that Dr. Lubell said to us when we were in there talking to him is that he would have to have something in writing, that you know you can't do much with these verbal conversations, you know.

And I said to Dr. Lubell, "I can have the secretary or Miss Vasquez can have the secretary prepare

- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15

W.

- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

- A No, nobody else.
- Q I am sorry, I have one other question:
- During the recess did you talk with Mr. Mathews, the recess we just had now?
 - A Yes, briefly.
- Q In your conversation did it refresh your recollection about any conversations you might have had with me?
 - A With Mr. Mathews?
 - Q Right.
 - A Mr. Mathews came --
 - Q Did it refresh your recollection?
 - A Yes.
 - Q Would you tell us what your recollection is?
- A He came to my office and I said -- I asked him if he were aware of the statement that Miss Sanchez had made, and he said no, he didn't know anything about it.

 And I said to him, "Well, she gave a statement to me. She asked for a copy. She took it away. She never came back."
- And Mr. hathews said, "I don't know anything about it."
 - MR. GRAY: Thank you.
 - THE COURT: All right, you may step down.
 - No recross?

	1	
- 1		

6

7

9

10

11

12

13

15

16

17

19

20

21

23

24

25

MR. GRAY: Right.

A B R A H A M S I L V E R B E R G, a witness called by the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. GRAY:

- O Mr. Silverberg, are you presently employed?
- A Yes, I am.
 - What is your employment?
 - A I am at the Albert Einstein College of Medicine.
 - Q In what position?
 - A I am the Director of Supporting Services.
 - O What does that mean?
- A It means I am responsible for housing, buildings and grounds, communications, telephones, and a number of others. I don't recall them all. I have about 13 departments which I am in charge of.
- Q Prior to that position, did you hold a position at Lincoln Hospital?
 - A Yes, sir.
 - Q What was that?
- A I was the liaison administrator for the Albert Einstein College of Medicine.
 - Q What were your duties as liaison administrator?

1

3

4

9

6

7

8

9

10

11

13

14

15

16

17

18

19

20

21

22 23

24

25

A I administered the affiliation contract, and I was responsible for all of the activities of Albert Einstein at Lincoln Hospital.

THE COURT: You mean affiliation contract, the affiliation between Einstein and Lincoln Hospital?

THE WITNESS: Yes, sir.

THE COURT: What exactly does that contract do?

THE WITNESS: The contract gives us monies to help run that hospital with our doctors and backup people.

THE COURT: Monies from the City?

THE WITNESS: Monies from the City of New York.

Q And the purpose of the affiliation contract is what, exactly?

A To help the hospitals of New York, which were unable to bring in doctors, qualified doctors, to take care of patients; and since we had the doctors, we brought them in, and the City of New York paid us for them so that we could pay their salaries.

O As liaison officer, was your primary function budgetary?

- A It was part of my function.
- What was the rest of your function?
- A Well, we hired parple, we had a personnel department for hiring of people.

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

called

•	mbri 80 Silverberg-direct 177
2	THE WITNESS: No, I wouldn't call myself the
3	moneyman.
	THE COURT: Do you ever remember having call
	yourself that?
	THE WITNESS: Well I was deep in finance bu

as deep in finance but maybe -- I'wouldn't use that term.

Q Mr. Silverberg, during the deposition that was taken in this case by me at our offices in October, you stated that you ran the hospital. Is that your testimony today?

- If that is what I stated, if that is what I said --
- Page 57, I asked you a question, you replied:
- I ran the place."

Mr. Riesel said, "Are you saying that you ran Lincoln Hospital?"

"THE WITNESS: That part of Lincoln Hospital which was part of Albert Einstein, yes."

- A Yes.
- That is your testimony?
- That is correct.
- Mr. Silverberg, would you tell us what your educational background is?
- My educational background, I never completed high school.

1	mbrf 39 Silverberg-direct 186			
. 2	A I don't know.			
3	Q I show you Plaintiff's Exhibit 10 which has been			
4	admitted into evidence. Do you recognize that?			
5	A Yes, I recall sending this.			
6	Q That is the letter of suspension that you sent			
7	to Mrs. Carrion?			
8	A That is correct.			
9	Q Prior to suspending her, had you had any contact			
10	with her?			
11	A No.			
12	Q Did you try calling her?			
13	A I did not.			
14	Q Did you try asking her to come to you by mail			
15	or memorandum?			
16	A I did not.			
17	Q Do you consider a suspension with pay a serious			
13	matter?			
19	MR. RIESEL: Objection to that, your Honor.			
20	I don't think that has anything to do with it.			
21	THE COURT: Overruled.			
22	MR. RIESEL: Nor is there a foundation for the			
23	question.			
24	THE COURT: He wants to know what he considers it.			
25	Do you consider it a serious matter?			

take place. I could not allow that, and I felt the best

25

1

3

4

5

6

8

9

10

11

12

13

14

15 16

17

18

19

20

21

22

23

24

25

MR. RIESEL: Your Honor, I don't see the relevancy of the last several questions about 1199.

THE COURT: I don't either. She may have a cause of action under some contract but that is not before me.

MR. GRAY: Is that a motion to strike the testimony?

MR. RIESEL: Well, Mr. Gray, yes, it is a

motion to strike the question, to object to the question

and strike the testimony.

THE COURT: The objection is too late so the motion is overruled. I don't see what relevancy it has.

Q Mr. Silverberg, did you ever discuss the Neighborhood Maternity Center position with anyone?

Strike that question.

Did you ever discuss the Neighborhood Maternity
Center position with Dr. Smith?

A No.

THE COURT: Cross examination?

MR. RIESEL: Yes, your Honor, I have some.

CROSS EXAMINATION

BY MR. RIESEL:

Q Mr. Silverberg, you testified that you went to Lincoln Hospital in 1965, is that right?

A Yes, sir.

1	mbrf 102 Silverberg-cross 199			
2	Q That was the time when the first affiliation			
3	contract was negotiated, wasn't it?			
4	A I believe it was during that period of time.			
5	Q And t'e affiliation grew as you were there?			
6	A Yes.			
7	Q More and more services were added?			
8	A Yes, sir.			
9	Q Were you involved in negotiating contracts?			
10	A I negotiated the contract for Lincoln Hospital			
11	representing the school down at the Health and Hospital			
12	Corporation.			
13	THE COUR' Why is this any more relevant than			
14	what he was asking?			
15				
16	MR. RIESEL: Your Honor, you have got me in a			
17	embarrassing position because I have to admit we don't			
18	think that it is relevant but relevancy has been placed			
.19	in issue by the plaintiff.			
	THE COURT: I observed I didn't think it was			
20	relevant when he asked him so don't you go on with it.			
21	MR. PERSEL: All right.			
22	Q You indicated that you fired Mr. Mathews; is			
23	that right?			
24	A Yes, sir.			

And you fired him as your administrative assistant,

1	mbrf 103 Silverberg-cross 200			
2	is that right?			
3	A Yes, correct.			
4	Q Would you tell me who hired Mr. Mathews as your			
5	administrative assistant?			
6	A Technically, I did.			
7	THE COURT: What do you mean, technically?			
8	THE WITNESS: Well, because I did the hiring.			
9	I personally hired the man. It was a position which was			
10	directly under me so I, instead of my personnel department			
11	handling it, I handled it.			
12	Q Now, sir, do you know a man named Daniel Gonzalez?			
13	A Yes.			
14	Q Is he related to Mr. Mathews?			
15	A Yes.			
16	Q In what way?			
17	A He is his brother-in-law.			
18	Q Do you have any personal relationship with Mr.			
19	Gonzales?			
20	A I certainly do.			
21	Q What is it?			

- What is it?
- We are very good friends.
- Is Mr. Gonzales of Hispanic origin, also?
- Yes.

23

24

25

I want to direct your attention to the last part

hospital.

22

23

24

25

0 At Lincoln Hospital?

At Lincoln Hospital.

Then he became a City employee for a period of three months?

	mbrf 105	Silverberg-cross 202
2		
	A	Three months, correct.
3	Q	And it was during these three months that Mrs.
4	Carrion w	as fired, I take it?
5	A	That is correct.
6	Q	Then there came a time when you left Lincoln Hos-
7	pital, is	that right?
8	A	Dr. Lubell?
9	Q	No, you.
10	A	Yes.
11	0	You left Lincoln Hospital when?
12	A	Pebruary of 1970.
13	Q	Then did there come a time when Dr. Ira Lubell
14	assumed y	your position as an administrative officer?
15	A	That is correct.
16	.,	THE COURT: What are you doing now, you?
17		THE WITNESS: I am the Director of Supporting
18	Services	at the Albert Einstein College of Medicine.
19		MR. RIESEL: May we go off the record?
20		TIE COURT: Do you want to go off the record?
21		MR. RIESEL: Yes.
22		THE COURT: All right.
23		MR. RIESEL: Discussion off the record.
24		(Discussion off the record.)
05		

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE.
FOLEY SQUARE, NEW YORK, N.Y. = 791-1020

THE COURT: You may go on the record and make your

3

6

7

8

9

10

11

13

14

15

16

17

18

19

20

21

22

23

25

A Yes.

Q I would like you to look at L for identification, and you will see the last sentence which says, "If this is not done we will take appropriate action."

Did you have any indication what the writers of this memorandum meant by appropriate action?

- A I think I did.
- Q What was that indication, sir?
- A My indication was that there would be a job action.
- Q What do you mean by a job action?
- A There would be a stoppage in the hospital.
- Q Now, aside from these written communications which are, I believe, Defendant's Exhibits -- in the order of their marking, H, J, I, K and L, --

THE COURT: For identification.

- Q Did you have oral communications from the employees at Lincoln Hospital with respect to Mrs. Odessa Carrion?
 - A I didn't hear the first part of that.
- Q I'm sorry. During the month of October, 1969, did you have any oral communications from employees of Lincoln Hospital with respect to Mrs. Odessa Carrion?
 - A Yes, I did.
 - Q Will you tell us what was said to you?
 - A Same thing that was said in this last memo.

25

Silverberg-cross

210

The people threatened action.

mbrf 113

- Q Do you recall if there was more than one occasion or was there a single occasion?
 - A No, there were more than one occasion.
 - Q Do you recall what was said to you?
 - A Yes, I recall --

MR. GRAY: Objection --

A -- a group of people coming into my office -THE COURT: Just a minute.

MR. GRAY: Objected to as hearsay.

THE COURT: Not offered for the truth. Offered for his state of mind. Overruled.

Q Go ahead, Mr. Silverberg. The question is what did these people tell you?

A These people told me in essence that if I did not do something about taking Mrs. Carrion out of there, there was going to be a job action.

Q Did they tell you the basis of their concern or demand over Mrs. Carrion?

A Well, the people from Social Service were concerned with her actions. They felt it was not fitting a social service worker.

The people from Council 37, the Civil Service Union, were concerned with the harassment of one of their

3

4

6

5

7 8

9

11 12

13

14

15

17

18

19

21

22 23

24

25

and tell us how you under, stood the problem or the matter as you described it?

A I looked at it as a --

Q No, no, sir. What did you understand the trouble was?

A The trouble was that the people that came to me were very much upset over what had taken place; and I felt very strongly that there would be a job action, very strongly.

And so I consulted with counsel and then came to the decision after talking with counsel to suspend her with pay until such a time as we had an investigation and we could bring this matter to a satisfactory conclusion.

THE COURT: When you say counsel, you mean the hospital's attorneys or Yeshiva's attorneys?

THE WITNESS: Yeshiva's attorneys.

Q Again, Mr. Silverberg, we are not focusing -I think your answer was helpful but I want to direct your
attention to the reason why the people said they were
upset. Would you tell us why they said they were upset
or why they were concerned?

THE COURT: What did they think, as far as you gathered, what did they think she had been doing that she shouldn't have been doing?

THE WITNESS: Well, the number one, the social

1

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

..

18

19

20

21

22

23

24

25

service workers thought that she was not acting as a social service worker should act.

THE COURT: In doing what? What was she doing that a social service worker shouldn't do?

THE WITNESS: Well, she was besmirching the Director of the Service who was not there to defend himself. He was away on vacation.

MR. GRAY: Your Honor, I just want to raise my objection to this hearsay. He says besmirching.

THE COURT: All this is offered for his state of mind, not offered for the truth of the statements.

MR. GRAY: I just want that on the record.

MR. RIESEL: Indeed, your Honor, I don't think the actual facts of October are in issue. We don't have a question here of whether indeed Mrs. Carrion was wrong, but whether the actions were reasonable.

THE COURT: That is true.

Go ahead, sir.

THE COURT: Not even that they are reasonable.

They could be unreasonable as all get out as far as race discrimination is concerned.

MR. RIESEL: Yes.

- Q Go ahead.
- A On the other hand, the other side of the fence

5

7 8

9

11

13

15

16

17

19

20

22

23

24

25

was the City employees who came to me; and were upset over the fact that Mrs. Carrion was harassing a young lady, and they felt that I should take action, they felt that I should, if you will, fire her, or take her off the job.

And they brought a representative of the union, and he also threatened me.

Q Now, sir, did you know a woman by the name of Kathleen Cullen? And I believe the name is spelled either K-u or C-1-1-1-e-n.

A Yes. I did.

oid you also know a person named Shirley Sanchez?

A Yes.

Q You did. Were these the workers you referred to who came to you?

A Yes, they and there was another young lady by the name of Sansone. These three young ladies came to me and told me of the harassment of Mrs. Carrion and they wanted me to do something about it.

Q What did they tell you, sir?

A They told me that Mrs. Carrion was harassing,

I think it was Miss Sanchez, wanting her to sign a letter
saying that Mr. Kagan had molested her; and the young
lady told me that was not true.

1	mbrf 120 Silverberg-cross 216			
2	into consideration in preparing your letter of October			
3	26, 1969 to Miss Carrion?			
4	A Yes.			
5	THE COURT: That was the suspension.			
6	MR. RIESEL: Yes.			
7	THE COURT: You did?			
8	THE WITNESS: Yes, I dic.			
9	MR. RIZSEL: Your Honor, at this time I would offe			
10	into evidence Exhibits H, I, J, K and L, all marked for			
11	identification.			
12	THE COURT: Any objection?			
13	MR. GRAY: Objection as to hearsay, your Honor.			
14	. THE COURT: They are not offered for truth. They			
15	are merely offered for the fact that they were received			
16	by him and considered.			
17	(Defendant's Exhibits H, I, J, K and L marked			
18	for identification received in evidence.)			
19	Q You made reference to a visit to your office			
20	by some lady, Shirley Sanchez. When did that occur?			
21	A In October of 1969.			
22	Q Was there one visit or two visits or			
23	A I believe there were two visits.			
24	. Q Did there come a time when they were accompanied			
25	by a person who was not an employee at Lincoln Hospital?			

in the Department of Social Service at Lincoln Hospital,

she was a representative of Local 1199. That is the

24

25

3

4

5

6

7

•

9

10

11

12

13

14

15

16

17

18

19

20

21

22.

23

24

A I have been working for the City of New York for 13 years.

Q Was this all within a hospital?

A All within the municipal hospital system. I worked four years in the voluntary system before I joined the City system.

- Q When did you come to Lincoln Hospital?
- A I came to Lincoln Hospital August 1962.
- Q Have you had training in labor relations?
- Yes, I have. The City of New York has given courses in labor relations and I have a certificate from those courses.

you attend a meeting at which the suspension of Mrs. Carrion was proposed or discussed?

- A Yes, I did.
- Q Would you tell us about that meeting?
- A The meeting was held in the Albert Einstein Annex, which is across the street from the hospital, in the conference room, and as I recall, Mr. Silverberg was at that meeting, Mr. Shulman, and the attorney for the college, Mr. Warchik.

There might have been other people there but I can't recall who the other people were, but I know that

3

5

6

7 8

9

10

12

13

15

16

17

18

19

20

22

23

24

25

those people were there, and I was there also.

Q What transpired there in terms of the conversation?

A Well, they were talking about doing something about Mrs. Carrior, taking some action, you know, against her, because of the turmoil that existed in the Social Service Department.

And at the end of the meeting, it was decided that she should be suspended; and I spoke up and, having knowledge of labor relations, indicated that whether she is right or wrong, she should be called in to -- so we could hear her side of the story before you suspend her. I told them if they didn't do that it was going to backfire, you know, having knowledge of labor relations. Whether I terminate somebody or suspend them, you have to hear their side of the story before you do it.

THE COURT: Your prediction turned out to be

THE WITNESS: Yes.

THE COURT: You heard Mr. Silverberg testifying about that meeting?

THE WITNESS: Yes, I heard him.

THE COURT: Does his testimony agree with your recollection of what happened?

THE WITNESS: He didn't go into any detail about

13

14

15

16

17

18

19

20

21

22

23

24

25

the meeting, but basically it was about the suspension.

THE COURT: I mean you heard what he said.

THE WITNESS: Yes.

THE COURT: As far as what he said, did it seem to you correct?

THE INESS: Yes, it seemed correct.

THE COURT: I don't mean you endorse everything

THE WITNESS: No, I didn't endorse what he said but what he said was --

THE COURT: His general recollection comports with your general recollection?

THE WITNESS: Right.

In matters involving patient care within the hospital, what would be the hierarchy by which decisions would be made from the bottom up?

Well, the hospital's organized in departments, and we have several administrators and an administrator is assigned, four, five or six departments. If a problem arises within one of those departments, that department head, if he couldn't solve it or she couldn't solve it, he would or she would go to the administrator responsible.

- Q And then from there?
- To the executive director. From the department

1	mbrf 133 Walker-direct 229		
2	head to the administrator responsible for the department		
3	to the executive director of the hospital.		
4	Q would social work be, at that time in October of		
5	'69, was social work a department that you were the		
6	administrator above?		
7	A Yes, Social Service Department was one of the		
8	departments I was responsible for.		
9	MR. GRAY: Thank you.		
10	THE COURT: Any cross?		
11	MR. RIESEL: Yes, sir.		
12	CROSS EXAMINATION		
13	BY MR. RIESEL:		
14	Q Mr. Walker, this hierarchy you were describing was		
15	with respect to patient care, I take it?		
16	A Yes.		
17	Q Do you remember a fellow by the name of Shulman?		
18	A Yes, sir.		
19	Q He was responsible for employee or labor relations?		
20	A Yes, he was.		
21	Q At the time that you were at the hospital?		
22	A Right.		
23	Ω You are still there, I guess?		
24	A I am still there.		
25	MR. RIESEL: No further questions.		

1

3

4

5

6

7

8

9

10

11

12

13

14

15

16

18

19

20

21

22

23

24

25

THE COURT: He asked him whether Mr. Silverberg hadn't told them he was off doing other things besides those that were assigned to him.

MR. GRAY: All right.

THE COURT: What difference does it make what Mr. Silverberg told him or didn't tell him?

So far you haven't established anything. If you want to bring out something in the plaintiff's favor on your examination that is all right with me.

MR. RIESEL: It is always a terrible temptation of a cross examining lawyer, your Honor. Might we make this witness our own?

THE COURT: What?

MR. RIESEL: Might we make this witness our own?

THE COURT: Certainly. You have no objection:

MR. RIESEL: I have to go outside the scope of direct so it is not proper cross examination.

THE COURT: All right.

DIRECT EXAMINATION

BY MR. RIESEL:

Q Do you know of Miss Shirley Sanchez or did you know a Miss Shirley Sanchez?

A Yes.

Q Did there come a time when Mrs. Carrion asked

	D .			
1	mbrf 145	Mathew-direct	241	
2	you to sp	eak to Miss Sanchez?		
3	l A	No.		
4	Q	Do you recall testifying to this	subject before	
5	the City Commission on Human Rights?			
6	A Briefly, yes.			
7	Q	I want to direct your attention	to page 393 of the	
8	transcript. Do you recall being asked, "How did you come			
9	to he in	her office?		
10	"A	Mrs. Carrion asked me to speak t	o Miss Sanchez	
11	about testimony, about a written statement she had given			
12	her. And	that she had refused to sign."		
13		Do you recall making that statem	ent now that you	
14	see it he	re? .		
15	А	I don't recall it but I see it.		
16	Q	Did you give that testimony, sir	?	
17	A	Yes, yes, I did.		
18	Q	Was it truthful?		
19	A	Yes. As far as I could as fa	r as I see it	
20	(13).			
21		THE COURT: If it was truthful t	then, then it	
22	must have	happened.		
23		THE WITNESS: Yes.		
24	Q	Did you indeed speak to Miss Sar	nchez?	
~				

Yes, I did.

1

3

4

5

7

8

10

11

12

14

15

16

17

19

20

21

3

25

MR. RIESEL: There were two Commissioners. Sometime two were in the room and sometimes one was there. It was Commissioner Colgate and Commissioner Halpern.

THE COURT: All right. You were on page 409 and 410

Q Would you explain what a provisional is?

THE COURT: He wasn't talking about provisional employees as the Commissioner observed his answer was not responsive. The question was about provisional employees, and the answer had nothing to do with provisional employees: and it was observed by the Commission to be unresponsive.

MR. GRAY: Thank you.

(Witness excused.)

MR. GRAY: Your Honor, we have one more witness to call at this time. We had another witness here, and when we learned of the 4:15 break, the gentleman wanted to go back to the hospital, so I am not sure that we will last much longer.

THE COURT: All right. I don't know why you let him go just because it was a 4:15 break. It is now 3:00.

MR. GRAY: Yes, a miscalculation, your Honor.

BENETT HERRERA, called as a witness
for the plaintiff, being first duly sworn, testified
as follows:

have an exception.

Your offer of proof is excluded.

2

1

3

4

5

6

7

8

10

11

12

13

15

16

17

18

19

20

21

22 23

24

25

MR. GRAY: All right.

THE COURT: You may step down, thank you.

(Witness excused.)

THE COURT: Is that your case, then?

MR. GRAY: We lad one more witness, your Honor, which, because of the blauation with Mr. Silverberg being shifted into direct, which I agreed to and then regretted, and then the timeframe that the Court proposed, I made arrangements with him to appear on Tuesday.

THE COURT: What would he say?

MR. GRAY: Mr. Richard Weeks, who is an employed of Yeshiva. He would testify as to discriminatory practices suffered by -- other examples of racial discrimination at Lincoln Hospital.

THE COURT: Has he ever testified before?

MR. GRAY: He has.

THE COURT: What does his testimony say?

MR. GRAY: His testimony in here as to those practices, that there were, for example, discriminatory standards used in evaluating employees and treatment of employees in the Mental Health Center; that they, for example, were told upon one occasion or told as a

that would be relevant to any issue in this case.

MR. GRAY: It would be the pattern of practice of discrimination, discriminatory treatment.

22

23

24

25

MR. RIESEL: I must say I believe his testimony before the Commission was much more limited than Mr.

1 mbrf 161 257 2 Gray describes it. He testified with respect to one unit, 3 the Mental Health Unit. He seems to make one generalization of that. 5 THE COURT: Why don't you read in his testimony. I can't be responsible for your letting witnesses go when 7 you have got the whole afternoon here. I will let you 8 read in his testimony at the Human Rights Commission. 9 MR. GRAY: May I submit it to the Court? 10 THE COURT: Let me see it. 11 Perhaps we will call a short recess and I will 12 read this. What was the other testimony you offered? 13 MR. RIESEL: The testimony of Mr. Raymond Kagan 14 which was introduced into evidence. 15 THE COURT: May I have that? That should be 16 up here. 17 We will take a short recess while I read these. 18 (Plaintiff's Exhibit 31 received in 19 evidence.) 20 (Recess.) 21 THE COURT: I have read Mr. Ragan's testimony, 22 and I don't see just why -- it was offered by the plaintiff -23 I don't see what the plaintiff thinks it accomplishes for 24 her. The issue there is the hiring of Avis Crocker; 25 and Mr. Kagan of course isn't here, I can't see him, but

XX

mow

THE COURT: I am dismissing the complaint.

As to the first claim, taking them in order, as to the first job -- and that was the student unit supervisor, which was the one that Mr. Cagen's testimony was about, I find as a fact that Mr. Cagen gave the job to Mrs. Crocker solely and exclusively because he in good faith believed Mrs. Crocker to be better qualified, which evaluation he subsequently revised, but at the time he gave it, that was his belief.

As to the second, I find, accepting Mrs. Carrion's testimony before the Human Rights Commission that she deliberately refrained from communicating her desire for that job to anyone, and accepting Mr. Cagen's testimony he did not know she was desirous of that job, there was therefore no discrimination on that one.

As to the suspension and subsequent firing, I do not reach the question whether it was state action or whether it was not state action.

On the evidence before me, according to the testimony of Mr. Silverberg, which I credit, and noting that it was confirmed in essence in a very material way by Mr. Walker, whom I asked, I find that Mr. Silverberg was confronted with a situation where he in good faith believed

.2

a strike was imminent. I don't know whether Mrs. Carrion did these things or did not do these things, because the evidence was not offered for the purpose of proving that she did them or she did not do them; it was offered for the mere fact that the statements had been made — although I must observe that it is peculiar that everybody was out of step except Mrs. Carrion, because there is no question that all these people said these things, for that is what Mr. Silverbers testified to. Whether what they saidwas truthful is not before me, so I don't know.

I find that Mr. Silverberg was confronted with

I find that Mr. Silverberg was confronted with this situation where he honestly believed that a strike might be imminent. And strikes in hospitals are not agreeable things. The fact that they are illegal is wholly beside the point. You and I did a lot of walking in 19 --

MR. GRAY: I was not a New Yorker then.

THE COURT: Well, I did a lot of walking then for a week or two during an illegal strike. Mr. Silverberg honestly believed that he was confronted with a situation where, if he did not move Mrs. Carrion out at least until Mr. Cagen could get back and straighten out the thing, he would be confronted with a strike. He therefore sent her a notice of suspension at full pay.

I am not saying I would have done it the same way

11.

.23

explained it to her, or he might not have. That is neither here nor there. He had a right to act as he did. He told her to stay away at full pay, and I am certain he was within his province. She elected to ignore his lawful command, and instead sent him an insulting letter. At that point, seemingly, he could reasonably conclude that, despite the advice he received to the contrary from the witness you produced — no, I withdraw that. The witness you produced did not advise him at that point; the witness you produced advised him on sending the suspending letter. At any rate, whether he wisely or unwisely rejected that advice is not before me.

I find as a matter of law that, without in any way threatening any remuneration to which she might be entitled in the situation with which he was confronted, it was perfectly reascnable for him to ask her to stay away. She deliberately refused to follow that direction and instead sent insulting letters or an insulting letter. I find that, confronted with that situation, Mr. Silverberg reasonably concluded that no further investigation would be fruitful, and fired her.

Among the things she did was showed up contrary to his instructions, which instructions were given in view of what he considered to be a threat of a strike.

MR. GRAY: I am asking if you are ruling --

24

25

THE COURT: What are you asking me to rule on?

5

6

7

9

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Are you suggesting there is something to rule on when a victorious litigant acts on what the Court gave it? I don't understand what you say you want a ruling on.

MR. GRAY: I was asking whether or not that is the determination. There was in fact the subsequent discharge --

THE COURT: The only evidence before me is that. the Human Rights Commission directed a reinstatement. was reinstated pursuant to that direction. The Court, Mr. Justice Dollinger, reversed the Human Rights Commission. Mr. Justice Dollinger was affirmed by the Appellate Division, which in turn was either affirmed or appeal dismissed, or whatever, by the Court of Appeals, and then they fired her again. What do you want me to rule on? What is the contention?

MR. GRAY: I am just trying to clarify for my sake that the discharge, then, you are holding, is --

THE COURT: When you ask for a ruling, I want to know what your contention is. All you have shown me is that they went to court and followed the mandate of the Court. What do you want me to rule on?

MG. RAY: Well --

THE COURT: I must be missing something.

MR. GRAY: Could I have a second, your Honor?

THE COURT: Yes.

1

.

5

6

7

8

9

10

11 .

12

14

15

16

17

18

19

20

21

22

23

24

25

(Pause)

MR. GRAY: No, your Honor, I don't have a contention on that.

THE COURT: Insofar as there is a conflict between the testimony of Mrs. Carrion and anybody else, I accept the other's. I was not impressed with Mrs. Carrion's truthfulness.

Either party can submit findings of fact, if they wish to, within ten days; otherwise the oral opinion of the Court will constitute the findings of fact.

MR. RIESEL: Your Honor, does the Court make a specific finding of fact with respect to the allegation of denial of the job for the Neighborhood Maternity Center?

THE COURT: I guess I didn't. I thought I had.

I credit the testimony of Dr. Smith in its entirety, which
in substance said that he hired Mrs. DeMorissey, who
coincidentally was a black, solely because of her qualifications and that he was wholly unaware of any previous complaint
that Mrs. Carrion had made against Mt. Sinai or anybody else.

MR. RIESEL: Your Honor, may we, if we choose not to submit findings of fact, submit an order?

THE COURT: Yes.

MR. RIESEL: Thank you.

THE COURT: That would be June 2; that is ten days.

mbwc

Honor?

Is that enough time? The plaintiff can submit findings of fact too, because there are some things that you may think you wish for appeal that you think are established, and if they are established, I will find them.

MR. GRAY: Could you make it fifteen days, your

THE COURT: Yes. How about June 9? That is a little more than ten days.

. 8

[SAME CAPTION]

STIPULATION OF FACT

- 1. Raymond Cagan, formerly a Field Work Unit Supervisor and Social Service Director for the Albert Einstein College of Medic at Lincoln Hospital is dead.
- 2. Counsel for the respective parties do not object to the admission of evidence of the testimony of Raymond Cagan before the Commission on Human Rights of the City of New York, and counsel for the respective parties further agree that no further foundation need be offered prior to its introduction.
- 3. A volume entitled "Record on Appeal, Supreme Court, Appellat Division, First Department, Yeshiva University against Commissio on Human Rights of the City of New York, Bronx County Clerk's Index No. 6224, Year 1970" is a true and accurate record of test mony, exhibits and proceedings before the Commission on Human Rights of the City of New York and also contains a true and accurate reproduction of a decision by Mr. Justice Dollinger of the Supreme Court of the State of New York with respect to a review a decision of the Commission on Human Rights of the City of New York.
 - 4. Lincoln Hospital is a municipal corporation located at 141st Street and Concord Avenue, Bronx, New York, and at all times relevant hereto was owned by the City of New York

- 5. At all times relevant to this case, Yeshiva University has provided cortain professional and other services relating to medical care at Lincoln Hospital and has supervised Lincoln Hospital's intern and residency programs pursuant to a series of agreements between it and the City of New York.
- 6. Plaintiff began her employment at Lincoln Hospital as a Social Work Supervisor on January 3, 1967.
- 7. Plaintiff, at the time of her initial employment, was on the city pay coll, but received a salary supplement from the Albert Einstein College of Medicine.
- 8. On or about March 13, 1967, plaintiff became a full time employee of the Albert Einstein College of Medicine and received \$11,000 in annual salary.
- 9. Plaintiff wrote Professor Leon on April 9, 1967, saying:

"Dear Professor Leon:

This is to apply for a position as Student Unit Supervisor. I am enclosing my resume and will expect to hear from you in the near future regarding an appointment for an interview.

Sincerely yours, /s/ Odessa Carrion"

10. On May 1, 1967, Professor Leon wrote plaintiff a letter in response to her April 9, 1967 inquiry. In that letter he stated:

"Dear Mrs. Carrion:

Thank you for your recent inquiry concerning field work positions at New York University, Graduate School of Social Work. From the resume and reference you sent us I certainly do feel your interests and skills

could fit into our program at the School. However, at this time there are no specific openings that we mights consider together.

I do like to meet with prospective candidates should positions become available -- as they frequently do. If you would like to discuss such a possibility with me, please call my secretary, Mrs. MacLaren, to arrange an appointment.

Sincerely,
/s/
Herman Leon
Associate Professor
Director of Field Work"

11. On June 21, 1967, Professor Leon wrote plaintiff a letter in which he stated:

"Dear Mrs. Carrion:

With thanks, I am returning the material you so kindly let me read. I enjoyed both the evaluations and the paper and was impressed with their sensitivity and thoughtfulness.

As I mentioned, we have not yet received any confirmation about new units and I am not able to be specific about a position here at this time.

I will be in touch with you should something develop.

Sincerely,
/s/
Herman Leon
Associate Professor
Director of Field Work"

The foregoing facts are stipulated and agreed to by the attorneys for the respective parties herein.

Dated: New York, New York May 20, 1975

Jack Greenberg
Eric Schnopper
James C. Gray, Jr.
Attorneys for Plaintiff

Sidney Schutz Attorney for Defendant, Yeshiva University

Daniel Riesel Of Counsel

EVALUATION OF LRS. CARRIED'S TORK 7/3/67

This evaluation covers the six month period from 1-3-67 to 9-3-69 During this period ire. Carrion was employed by AECOM as a Social Work supervisor in the lut-latient Clinic in the Boot. of Endieine at Limela Hospital. Ers. Carrion's duties consist of supervising 3 Case-Aides screening patients from the Screening Clinic for M.H.C. referruls, S.W. Consultant to the supervising dector in the Ledical Clinic as well as the doctors who headed the several Clinics in Ledicine.

In addition to this, Ers. Carrion screened and made referrals on some 103 cases as well as arranging and attending Conferences with the Clinic doctors, the Home Care Popt., the Dept. of Welfare, BCW, BCO, the Domestic Rolations Court, and the Housing project managers around the many problems presented by 308 eases referred to Mrs. C. and the 3 Case-Aides working under her supervision during this 6 months period.

In assuming the administrative part of supervision in the Out- atient Clinic, Urs. C. took over a completely disorganized, highly pressuring, conflicting situation and sot up caseleads for her workers, as well as establishing professional working relationships with the medical personnel for the first time in these Clinics. Through her skill and understanding, she functioned successfully as a lieson person between the O.P.D. and community agencies where many referrals were made to meet patient meeds

Mrs. C. also carried a treutment load of 6 troubled adolescents referred by the schools in the community and five married couples overwhelmed by awrital conflicts. Ers. C. functioned as trouble shooter as well as emergency problem solver for the many short term scorgenoies presented by patients who were not carried on a caseload basis, but who had some into this Clinic for modical aid as well as for solutions to some of their many pressing problems. Many of these kinds of cases were called in by telephone eithor by the patient or a Community Agency.

Mrs. Carrion demonstrated exceptional oreative ability in establishing a smooth running Social Service Unit in the O.P.D. Clinic in handling the many problems as well as problematic personulities with whom she was confronted while administering to paties meds, worker's problems, and the modical staff's noeds and problems. She was able to motivate her workers to assume full responsibility for managing their ecceleuds, planning their Field Visits, and doing Intake. Hrs. Carrion views supervision as prodomimately a toaching role and in this role, sho is thorough, patient, understanding, considerate and aware of the worker's meds, ability and limitations. Her approach to supervision of the worker's case hardling is diagnostic and her goals are to alort the worker to the dynamics in the client's problems, his meds and how to best aid him in the meeting of his needs. One of Mrs. C.'s goals in this area is to essist the worker in developing more self-awareness and to realize how her own problems can affect her handling of client problems as well as her relationship with the medical stuff and her colleagues.

Ers. Carrion relates well to admiristration. She follows directions, attends and contributes to staff meetings and is diligent in currying out and supporting the policies set down for the Social Work Department.

irs. Carrion is honost and forthright in dealing with colleagues as well as the workers under her supervision. She quickly gives the other person credit for demonstra ted abilities. She has a good sense of humor and people enjoy working with her when they are willing to assume their share of responsibilities.

I am recommending Mrs. Carrien for the Student Unit Supervisor's position at this hospital.

sees Certion Secial Work Supervigor-C.P.D. Med.Clinic 142a

January 8, 1968

Mr. Abraham Silverberg
Licison Administrator
LINCOLN NOSPITAL
Concord Avenue at East 141st Street
Bronx, New York

Re: MES. ODESSA CARRION

Dear Kr. Sourberg:

Floase be advised that the undersigned has represented the above-nerved MAS. CAPRICA with respect to her complaint now pending before the NEW YORK CITY COMMISSION FOR HUMAN RIGHTS. I reconcly have been advised by MRS. CARRICH, of a position which might be available to her entitled "SOCIAL SERVICE DIRECTOR OF THE XEIGHTONHOOD MATERNITY CENTER." MR. RATHOND CLOSE Coil Device Director at LINCOLN HOSPITAL. has advised the undersigned that the salary offered to MRS. CARRICH would be \$12,500.00. As I understand it, the responsibilities involved in the aforecase position are greater by far, then those presently involved in MRS. CARRICH'S position as "SOCIAL MORE SUPERVISOR IN THE OUT PATIENT CLINIC," at LINCOLN HOSPITAL.

However, the salary aforesaid is only \$100.00 greater than that which LRS. CARRICA would receive in her present position, including increments and raises which she would receive this month.

I am troubled by the fact that a new position although offered to her, with increased responsibilities, does not carry with it an appropriate increase in salary.

I was advised by MR. CAGAN, that the previous holder of the position as "SCCIAL SERVICE DIRECTOR OF THE NEIGHBORHOOD MATERMITY CENTER" received \$13,000.00 per year. As I understand it, this latter salary appears to be one which would be satisfactory

- 2 -

to HTS. CARRICH. In view of the fact that MES. CARRICA would be a competent person to accept this new position, and the talery to be paid would be no greater than that paid to her predacestor. I do not understand on what basis she is refused an appropriate increase.

I find it difficult to believe that salary lines are so rigid as not to be finible enough to entail an increase of \$500.00 per year, where justified and where no increase in the overall budget would be forthcoming.

It would be very much appreciated if you would advise me of what determination has been rade with respect to this matter, at your very earliest convenience.

Very trul yours,

TiT:ci

TIKOTHY M. TAYLOR

His court in the feet out the property where the state

ce: MR. RAYNOUD CACAN Social Service Director of Lincoln Hospital

2 4113

LETTER DATED JAN. 23, 1967, The Later Comments of the Comments of the Later Comments of and Comme Com Ale His petal Kundel, 21.4.1.41 17.5 at E1415+ 7-3,1567 (Sic) Her is to interior you That decles It The proction is south Same Gulater Apreliantood 1170 to nesty Unite at the 7 212,500 with the Univertending that ling as put to the som of 13,000. of ife This westerily on 1-1-68 but 2 that it is fant to put this in uniting Succeepyjour Tipe Vilian Cerco-B-5

PLAINTIFF'S EXHIBIT 8 -COMPLAINT BEFORE THE COMMISSION ON HUMAN RIGHTS

CTTY	~	-	YOZE
	140	14 40 40	

Considution on Burn Rights on the complaint of

ODESSA CARRION,

-against-Complainent

and provide to the second

York University, Einstein Medical tege, Lincoln Hospital and mend Cagan,

Respondent

Complaint No. 3072--J

Amended as of December 4,1968

OPESSA CARRION

45 m. Carrier 12 ...

residing at 5500 Fieldstone Road, Riverdale, New York

charge the above-named Respondents

The widenessia.....

with an unlawful discriminatory practice relating to employment

September 1967 and March, 1968

boomuse of my RACE(X), COLOR (X), CREED (), MATICHAL CRICIN (),

ACE (), SEI ().

. The particulars are:

- 1. I am presently employed at Lincoln Hospital for the Einstein affiliation located at Southern Blvd. and Concord Avenue, Bronx, New York. My position is Social Work Supervisor in the Out Patient Clinic. I have been functioning as a social Work Supervisor for the past 8 years.
- 2. I applied to New York University in May of 1967 for a position as Student Unit Supervisor. At that particular time this application was made to Hermin Leon, Assistant Professor, Director of Field Work.
- 3. In reply to my application Professor Leon stated that at the particular time there were no specific openings to be min considered, but he would notify me of any openings. E-29 (1 of 2)

- 4. In June of 1967, the Social Work Administrator of Lincoln Hospital resigned. The Student Unit Supervisor of Lincoln Hospital took the Social Service Director's position. I was never informed by the New York University about the opening of Student Unit Supervisor at Lincoln Hospital. I then spoke to Mr. Raymond Cagan and he advised me that I was being considered for this position.
- 5. Later, I approached Mr. Raymond Cagan once again. I expressed my surprise to Mr. Cagan for not being considered for this position. Mr. Cagan then made statements concerning the salary scale for this position, stating that it was inadequate for me. I then asked him that I believed that New York University should or could supplement the income as I know it was their practice with his salary. I did not get a reasonable response to my question.
- 6. In late July of 1967, by memorandum from Mr. Cagan, I learned that a Miss Crocker received the appointment. To my knowledge, I know that the majory given to Miss Crocker is in excess of the salary offered me by Mr. Cagan. Miss Crocker is a Caucasian.

In September, 1967 a position of Student Unit Super for in Group Work and available and was filled by a Mr. Levy. The lationer was never visual of this vacancy nor were my qualifications and seniority for this visual of the vacancy for the lation of the vacancy for the lation of the vacancy for the lation of the vacancy for the vaca sition considered. Even though Fir. Raymond Cagan had previously indicated no that he would consider me for any subsequent vacancies for Student it Supervisor.

That in December of 1967, the position of Director of Social Services or the Neighborhood Maternity Center became available. This position as on the pay roll of Einstein l'edical College. I indicated my interest nd was adviced that the selary would be \$12,500.00. Although this new osition entailed greater responsibility than my then present employment, he salary increase would have been only \$500.00. I requested that an inrease in the salary for this position be considered. I was advised that he starting salary could not be increased. Thereafter, in January of 968, I advised the respondents that I would accept the position at the stated \$12,500.00 salary. The respondents refused to hire me even though he position was vacant and remained so until May of 1968.

am a Nogro. I charge that Respondents discriminated against me because of my color in violation of the Administrative Code of the City of New fork.

ACARDI, HARBERT LICENT, DELIGIER I ナナ

I have not occurred my cotton, Mail, existent or commentative based upon the spore allegades codes the the sollege

CITY OF HE TOTT) CO. : COLLET CO New York

(Cigastero of Complainant)

ODFSSA CARRION being taly coors, deposes and error that fereguing completes and know the ecotomic thereof; that the some is true of .. her

Ca oranged of arrows ben tod traceded

the 4the J cl

E-29 (2 cf 2)

December

TIMOTHY M. TAYLOR
NOTARY PUBLIC, State of New York
Has 21-1/2-1645
Qualified in New York County

issies Expires March 30, 19 70

(Cipatoro el Conlaine)

EVALUATION OF CARRION ON DECEMBER 31, 1968

IRS. COLCUA CAMAICH

Department of Social Service July 1, 1967 thru Pec. 31, 1968

The following is a surrary of Krs. Odessa Carrion's responsibilities and activities of Supervisor of the Medical Gut-Putient Department in the Social Service Department bent Linstein College of Medicine - Lincoln Hospital. The surrary covers a period no from July 1, 1967 through December 31, 1968.

In her position as the Supervisor for the Medical Out-Patient Department, Mrs. Carrion and the following responsibilities:

(a) The supervision of professional staff functioning within her

(b) The training of para-professionals for social service careers;
(c) Participation in community activities by engaging in community

In addition to the above, him. Carrien also assured responsibilities for carrying vidual cars situations; seordinating the redical services that emainated from her vidual cars situations; seordinating the redical services; and, an active role in the in-service training from within the social services department.

Mrs. Carrion, a rather placeant, highly intelligent individual, had no difficulty in all relationships both with her peers and other allied professionals working within the relationships both with her peers and other allied professionals working within the relative to form relative the made contacts which in the cultury. This ability to form relative the made contacts which in the cultury. It is forthest tially one might gain an impression that irs. Carrion is stand-offishness may be attributed in the truth. The reason for the initial feeling of stand-offishness may be attributed the fact that Mrs. Carrion is not one to rush impulsively into a situation. As destined above, a clear thinker, she observes the situation first. form a tentative bed above, a clear thinker, she observes the situation first. form a tentative pion and then proceeds to move into it. Each of why Mrs. Carrion is able to form attention with others as well as having these relationships reciprocated may well be attention with others as well as having these relationships reciprocated may well be attention with others as well as having these relationships reciprocated may be a difference of opinion. Mrs. Carrion is always willing to listen and ready to the adifference of opinion. Mrs. Carrion is always willing to listen and ready to left factual explanations. While strong whiled and strong of mind, she is willing and to arrive at mutually satisfactory conclusions to any particular situation being accused.

Mrs. Carrion continually demonstrated exceptional teaching skills as was examplified the supervision of her professional staff as well as in the process of training the ra-professionals. The training of the para-professional was an exceptionally difficult sk to assign to one, yet lirs. Carrion handled this assignment for beyond what one could we reasonably expected of her i.g. the para-professionals consisted of two types of relicos; one, a group of trainees from the womens Talent Corp, who not only had no formal mining in any profession, they did not even have a high school education; and, two, a oup of trainses from the American Council of the Emigres in the Professions, who were ofessionally trained individuals (generally teachers) displaced from foreign countries ad having to have to be re-trained here. Ers. Carrion's success with the trainees my b remarked by the fact that one of the trainces was employed by this agency at the com-letion of the training program. The only reasons the other were not employed by this gency was due to the fact that there were no lines available for employment. Mrs. Carrien's ole in training did not stop with the ctove. During the time referred to in this summary rs. Cerrion rade herself available to the Staff In-Service Training Committee and is wrently involved in doing a study and evaluation of the social service department's ccording systems. Compliants' Cx. -54

1498

CARRICH, Mrs. O.

-2-

Evaluation

Much of Mrs. Carrion's success in the training of personnel for social service must be attributed to her knowledge of the psycho-dynamics of personnelity growth and human behavior, as well as her understanding of and her lability to transmit the effects of cultural changes and pressures on the individual. She is nost adopt in explaining the psycho-cocial make-up of the individual and how this make-up influences the daily life of the individual. Mrs. Carrion's knowledge of the individuals behavior was not only helpful in the training programs within the department, but was also extremely meaningful in her associations with the medical profession within the hospital. On more than one occasion Mrs. Carrion was helpful to the medical person in having him understand the psycho-cocial situation that the patient was involved in.

During this period of time Mrs. Carrion has continued to develop an active role in the community. She has become associated with several action groups, most noted and one that could develop into teing the most influential force in the community is the Health and Hospital Council. She has also been active with a borough-wide coordinating council, recently being asked to head up the Committee on Mental Health. Mrs. Carrion was also influential in effecting a change in the referral system that the City's Department of Social Service was using to send patients to our facility. The new system introduced not only provide for the client to move from the Department of Social Service to our agency much more smoothly but also enables the client to move quicker for needed services. She always keeps abreast of the social issues concerning the individuals in the community as well as these concerning the profession. Excently she took the responsibility of bringing to the staff attention many questionable procedures in the licensing of certified social workers in the State of New York. It was through her efforts that the staff mobilized themselves to write, as a unit, to the State Ecard of Regents, expressing their concerns.

Administratively, Mrs. Carrion has always fulfilled her responsibilities above and beyond what was expected of her. She selded is absent from work and is always punctual for her appointments. She comes well prepared to conferences, entering into the discussions freely and staying well related to the particular topic being discussed. Her written work, reports, statistics, etc. is always submitted in ample time to meet deadlines. The reports are concise and meaningful which one finds casy to handle. On several occasions during this period of time, Mrs. Carrion was asked to represent the department at a community organization meeting sponsored by another social agency. Without having to be reminded Mrs. Carrion submitted summaries of the meetings attended. Mrs. Carrion has always made herself available to accept and assume responsibilities that were actually cutside of her domain. She has always been cooperative, not only to her own staff but to other staff personnel as well.

Mrs. Carrion has been a tremendous asset to the entire staff. Morking under extremely trying conditions, such as a lack of sufficient staff, inadequate and antiquated office space, with shortages in plain every day working materials, she has been a strong force in providing patient care. It should be noted that when Mrs. Carrion criticizes or complains about anything the criticism or complaint is done to improve patient care rather than just criticizing because she does not like something.

There is no reason to assure that has Carrion will not continue to function as she has been doing. It is hoped that we will be able to take more advantage of the rany potentials that has Carrion has to offer.

5-6-3

Plaintiff's Exhibit

Evaluation

Haymond /agen, ACSI Director

** 11-+(0)

753 - - + 1 FF +- + 2"

-12 -1 -5.4

Department of Social Service

the shove statement and have found it acceptable:

神をサランドのおかいこれをはいしなかったりますのでもいい

killing in the little TENER TO

Little in the second was

12.

7.53

ALBERT EINSTAIN COLLEGE OF MEDICINE of YESHIVA UNIVERSITY

MEMORANDUM

Mrs. Odessa Carrion Supervisor, O.P.D. Medical Social Service

October 28, 1969 DATE

Mr. Abraham Silverberg Liaison Administrator

notice of Suspension.

This is to inform you that you are suspended, with pay, effective immediately, pending investigation.

For your information, a number of Social Service staff has insisted that your employment with the College of Medicine be terminated, on the ground that certain of your acts have been unprofessional and have tended to disrupt the effective functioning of the Social Service Department and the activities of the affiliation at Lincoln Hospital.

Your suspension will be for no longer than three (3) week during which time you are requested to absent yourself from your duties and from the Social Service Department. This will give the Administration an opportunity to make full investigation of the circumstances. You may be requested to appear for investigatory Sellenberg conferences.

AS:rbh Copics:

Dr. Ira Lubell, Assistant Commissioner

Mr. H. Andre Walker, Deputy Assistant Commissioner

Mr. Stanley Shulman, Assistant Hospital Administrator

Hr. Raymond Cagan, Director of Social Service:

Mr. Joseph Kay, Director of Personnel, AECOM

Mr. Henry C. Woicik, Director of Employee Relations, Yeshiva-University

Payroll Office

non. 6/69-Complaints' E7/3
inil. D.grundy

LETTER DATED OCTOBER .29, 1969

October 29, 1969

Dr. I. Labell Ass. Commissioner Hospital Director

Deer Dr. Lubell:

This is to bring to your ettention the statement informing me that I was being suspended for 3 weeks signed by Mr. Abraham Silverborg without giving me a hearing or spelling out specific charges against we.

As the laicon officer, Mr. Silverburg does not have the cuttority to take this action as well as no basic on which to base such a suspension. This action represents a violation of his own position and abusing his own attority. The ludierous busic which he is using is based on a potition where I had no hearing and on removed hearings at which I was not present. This wind of action demonstrates his abuse of his authority as well as his irregular behavior. I am requesting clarification of this untur as well as the charges I placed against the workers in Social Service. I gave you a copy of the latter document on 10/23/69.

I am requesting that proper action be taken against Mr. Silverburg for his reckless intrusica into the affairs of the Social Service Dept., in order to cause damge to me as a result.

I will continue to service my patients from the 17 clinics which my unit covers as they would suffer severely in my absence. There is no worker in my unit qualified or trained to take over this complicated and demanding service.

Respectfully yours,

Mrs. Odessa Carrion

OFD Social Work Supervisor

CC/cy's

Dean Wa. Glasser

Mr. Josephary, A.E.C.O.M.,

Director of Personnal

Mr. A. Silverberg

ProI

nor. 19/69 - Baganleit

Et I - 22 - D.g.

PLAINTIFE'S EXHIBIT 12 NOTICE OF DISCHARGE DE ED OCTOBER 31, 1969 ... ALBERT EILISTEIN COLLEGE OF M of YESHIVA UNIVERSITY MEMORANDUM DATE: October 31st, 1969 Mrs. Cdessa Carrien Saperviner, O.P.D. Medical Social Service Pr. Abraham Silverberg Ligison Administrator, L.H. - AECOH Notice of Discharge. This is to inform you that you have been discharged for reason bordination, effective immediately. The enclosed check respress salary through October 31st, 1969 end accrued vacation in the amount of five (5) days. Liaison Administrator. 25/00 cnc. Ce-Dr. Ira Lubell, Assistant Commissioner Mr. M. Andre Walker, Deputy Assistant Commissioner Mr. Stanley Shulman, Assistant Hospital Administrator Mr. Raymond Cagan, Director of Social Service Mr. Joseph Kay, Director of Personnel, AECOM Mr. Henry C. Voicik, Director of Employee Relations, Yeshing I Payroll Office

PLAINTIFF'S EXHIBIT 14 -

Ers. Odease Carrien 5500 Fieldston Hond Riverdale, New York January 28, 1970

Dr. I'm Imbell Liminon Officer for the Minatoin College of Medicine Lincoln Mospital Bronx, New York

Dear Sir:

It is now common knowledge that Regwood Cagan, Director of the Lincoln Rospital Social Service Department is resigning his position and that his terrination date is 3/1/70. I am requesting to be considered for this position.

. I am enturing my lith year as a social work supervisor. During this period I have taught supervised and engaged in case work, group work, community organization and both group and one to one ongehotherapy. I have traduct to the students, retrained professionals from other field, as well as trained paroprofessionals. I have taught the sectors, in the 17 clinics which my unit covers, the social aspects of medicine as well as functioning as a psychiatric consultant for them and the other medical personnel. I completely reorganized and established social services in these out-petient clinics which resulted in these clinics functioning on a tenn basis for the first time, with this Social Service department. I offered valuable assistance to the OPD administration by ironing out a serious problem with the Dapt. of Welfere administration which was created by individual units in the Welfare centers. They were flooding CFD administration with desperate potients who were threatening and demanding medical statements on the spet. These poor patients were led to believe that their assistance would be cut off unless they returned the some day with complete medical statements. After my conferences with Dept. of Welfare administration, these requests were mailed in by immestigators as they should have been.

I chaired the consists which established rules for case assignment. This resulted in clearing up the serious confusion and many times open fights between workers around sho should essure responsibility for different cases.

I also chaired the recording cornitive and during the last meetings of this cornities was in the process of highlighting the kinds of material necessary for any record so well as methods of simplifying semantics in the recording of this material.

In my last position at Harlem Hospital where my skills were put to greater use I established Social Services in the CES-DIN clinics. I I trained graduate workers, case aids and paraprofessionals. I conducted saminars for the Pediatric and CES-DYN doctors in teaching them the social aspects of medicine. I conducted and participated in as well as trained my workers in the preparation of cases to present at the Social Work Seminars set up by Columbia University.

I conducted group therapeutic sessions for uncorried mothers and their families, as well as conducting training sessions on the social aspects of patients' problems for graduate nurses praticals and nurses wide.

I discovered the need for and with the sid of the Board of Education established a school for unsarried nothers of school age. This project continues to function as a great preventative measure in the curbing of delinquency and the preparation of young people to become useful members of society.

As I have done in this community, I established excellent working relationships with community agencies.

several groups of community residents and agencies which were engaged in the improvement of health services for the residents. Presently, I am the deprovement of health services for the residents. Presently, I am the community of one and a matter of the groups, the formal the school system improvement of health facilities, the latter assisting the school system in cutting down and eventually eliminating suspensions. I am a member of the Brenx Grean League Hoard and in this especity I chair two committees one on Puerto Blean affairs and the other on improving the facilities for the prevention and treatment of drug addicts.

My references and school transcripts which are in your possession will show that I have been in the field of Social Work for some 22 years and during this period have held positions and received excellent references in all of the branches of this field.

I fully understand the cultures, the handicaps and the desperate needs as well as the dynamics behind the needs of the residents of this community. I also an aware that our present Social Service Dept. has not acratched the surface in the meeting and understanding of these needs. I would like to be a part of your new crash program which I understand is going to be gested towards the meeting of some of these needs. It is my feeling that I can make a valuable contribution to this program and to this community.

OC/oyn

ec: Dean Mr. Glaser

tr. A. Walker, Ass. Corm. in charge of Social Service OPD Social Work Supervisor

Sincerely yours,

Mr. Paul Kudder, Commission on Civil Rights Administration Lawyer Mr. Monsette Flores, Chairran of Community Advisory Board. PLAINTIFF'S EXHIBIT 15 LETTER DATED FEBRUARY 2, 1970
ALBERT EINSTEIN COLLEGE OF MEDICINE
YESHIVA UNIVERSITY

LINCOLN HOSPITAL -

781 EAST 142No STREET BRONX, N.Y. 10454

ADMINISTRATION

February 2nd, 1970

Ibra Odessa Carrion
5503 Fieldston Road
Riverdale, N. Y.

Dear-Hre_ Carrion:-

HITELD OF THE PARTY OF THE PART

I am in receipt of your letter of January 28th, 1970 in reference to the position of Director of the Department of Social Service here at Lincoln Hospital.

I am likewise awars of your background and can assure you that if and when the college is prepared to replace Mr. R. Cagan, your application will be reviewed without prejudice by those responsible for making a decision in this matter.

Very truly yours,

IRA LUBELL, M.D.

Director of Professional Services/ Chief Executive Officer

TREE 15-54

IL/go

PLAINTIFF'S EXHIBIT 16 - MEMORANDUM DATED FEBRUARY 25, 1970

ALBERT EINSTEIN COLLEGE OF MEDICINE

MEMORANDUM

TO:

SEE DISTRIBUTION

DATE: February 25, 1970

FROM

Irving Starin, M.D., Director, Ambulatory Care Services

SUBJECT:

Social Service Director

Effective March 1, 1970, and until further notice,
Miss Carrie Miller will be the Acting Director of Social Services
at Lincoln Hospital. All social work supervisors, irrespective
of salary source, will be responsible to Miss Miller for the
effective and optimal functioning of their programs.

am

cc: Dean Glazier - AECOM

Dr. Bauer

Dr. Lubell

Mrs. Carrion

Miss Chaplin

Mrs. Keuther

- C. H. Miller (Home Care)

Miss Randall

Miss Sealy

Mrs. Wacnsner

Mr. Kartychak

Odessa Carrion 5500 Fieldston Road Riverdale, N.Y. July 2, 1971 Phone: 549-7681

Mr. William Plummer Assistant to the District Superintendent District 9 1377 Jerome' Avenue Bronx, New York 10452

Dear Mr. Plummer:

I am enclosing my resume in application for the position of Director of your Drug Provention Program for Adolescents.

I will be available for interviews and can be reached at 549-7681 Monday through Friday, or at the above stated

I am looking forward to meeting with you and will expect to hear from you in the near future.

Sincerely yours,

Odessa Carrion Social Work Supervisor MASW - ACSW

Encl. Resume

Raymond Cagan-for Complainant-Direct

Q. If they didn't find your credentials adequate what do you think would have happened? A. They might have not found me acceptable.

Q. And you would not have gotten the job! A. They might not have found me acceptable for that particular

job.

- Q. In your position as student unit supervisor at the physical facility of Lincoln Hospital you were on the payroll of Albert Einstein Medical College? A. On two payrolls.
 - Q. And NYU? A. That is correct.
- Q. Did you thereafter become a replacement for Miss Bernstein? A. I did.
- Q. What was her position? A. At the time I was working as a field work unit supervisor her position was director of social services of Albert Einstein Hospital, located at Lincoln Hospital.
- Q. In your capacity as director of social services at Albert Einstein Medical College at Lincoln Hospital did you have occasion to interview people as student unit supervisors? A. I did.
- Q. What were the procedures when you were desirous of filling a position as student unit supervisor? A. I would generally review applications in the files if they were available, and make recommendations to the school I would be working in that I would be interested in employing this person as unit supervisor.

Q. You would do the initial groundwork that this person was at least in your opinion qualified? A. Yes.

Q. And then submit it down to Professor Leon, or whoever it was who was the appropriate person at the university? A. That is right.

Mr. Taylor: No further questions.

Raymond Cagan-for Complainant-Cross

Cross-examination by Mr. Semeraro:

Q. With regard to Mrs. Carrion, who made the decision not to hire Mrs. Carrion? A. Actually I did.

Q. Did Professor Leon or any other New York University representative play any part in that decision? A. No.

Mr. Taylor: I object to this line of questioning at this time on the grounds that it has no relationship whatsoever to the direct examination of this witness.

Mr. Semeraro: But it does. The direct examination is to show the hiring.

Commissioner Colgate: You may explain your

objection.

Mr. Taylor: The direct examination of this witness pertained only with respect to the mechanics of hiring a student unit supervisor, not with respect to a particular individual.

I think counsel may prove that aspect of his case, if he wants to call this witness as his own on direct examination; but I think even though this is a flexible proceeding, he ought to be at least confined to those areas covered on direct examination.

Mr. Woicik: Since this will have some bearing on my cross-examination of this witness I would like to be heard, too.

My rights would be foreclosed by the ruling that is about to be made.

Commissioner Colgate: State your objection.

Mr. Woicik: I think Mr. Taylor examined this witness with regard to procedures that have been

Raymond Cagan-for Complainant-Cross

used, and certainly I don't feel he has offered that kind of evidence and testimony to show that they were not used in this particular case.

I think the door has been opened with regard to

this procedure.

Mr. Taylor: I will withdraw the objection.

By Mr. Semeraro:

Q. Is it true that the role of New York University with regard to the job of unit field supervisor is to approve or disapprove, after you have made the initial decision to hire? A. That is not exactly true.

Q. Explain it, please. A. There are several procedures. One must appreciate the fact that in a student training operation the agency hired to do the actual manual or physical training, and in our particular profession, the field work training, as was explained by the previous witness—the applying of the theory absorbed in the class-room—there has to be a joint relationship between the school and agency.

We may have a candidate that sends in an application to me and says, "I would like to be considered for field work supervisor," and I am using "X" college students at

this particular point.

If I felt the person was qualified I would then contact, either by writing or telephoning or going down and bringing the application with me and showing the person in charge of the students and the personnel—whoever is given the responsibility—and saying, "This is the person I am interested in."

If he says this person would not fit into our mode of teaching or mode of practice in any fashion, then I would probably not hire the person.

Raymond Cagan-for Complainant-Cross

Commissioner Halpern: You say, "1 probably wouldn't."

Would you have a right to disregard that and hire them anyhow?

The Witness: I could hire them, but not for that particular position, if I wanted that position to be working with the school.

Q. With regard to Mrs. Carrion, you did not ask New York University for permission? A. No.

Q. With regard to Mrs. Crocker, who was she paid by?
A. Albert Einstein.

Q. Did she receive any money from New York University? A. No.

Q. With regard to the money you received from New York University, this was in your capacity as a student assistant professor at New York University? A. That is right. When I was hired for the job I was informed that a faculty appointment went with the hiring of the position.

Q. This was separate and distinct from your employment at Lincoln Hospital? A. That is right, because the faculty position required certain responsibilities that I had to assume that were not directly—could be indirectly—related to the Yeshiva University.

For instance, as an assistant professor I was compelled to assume a committee position on the faculty.

Q. You received separate checks, one from New York University and one from Yeshiva? A. That is right.

Q. The work you did for New York University was limited to supervising students? A. The work I did for New York University through the Albert Einstein check was limited to the students. The work I did for New York University was in part because of my faculty work.

Raymond Cagan-Respondent-Direct

RAYMOND CAGAN, a witness herein, having been first duly sworn by the Commissioner, was examined and testified as follows:

Commissioner Colgate: Give your full name and home address to the Court Reporter.

The Witness: Raymond Cagan, 960 Grand Concourse, Bronx, New York, Zip 10451.

Commissioner Colgate: You may proceed.

lirect Examination by Mr. Woicik:

Q. Mr. Cagan, are you employed by the Albert Einstein College of Medicine of Yeshiva University? A. I am.

Q. In what capacity? A. I am Director of Social Service at Lincoln Hospital.

Q. How long have you been employed at Lincoln Hospital? A. As a Director of Social Service since July 1, 1967.

Prior to that position, I was employed as a field work supervisor in charge of a graduate student unit since September of 1964.

Q. At the time that you became the Director, did your previous position as the student social work supervisor become vacant? A. It did.

Q. Was that position subsequently filled? A. It was.

Q. Were you responsible for filling it? A. I was.

Q. Could you tell us the procedures that were used in filling that position? A. Well, we let it be known that there was a position vacancy and I informed N.Y.U. who was involved in this position vacancy in as much as we would be having their student unit and somebody would have to be hired to supervise the students.

Raymond Cagan—Respondent—Direct

I passed the word around, word of mouth, and I approached several individuals, letting them know that the position vacancy was available.

There was at that point, at that time, there was no formal announcement made as to the position vacancy.

Q. How many people did you consider for the position?

A. Two from internally and then two that were recommended by N.Y.U.

Q. Whom did you ultimately choose? A. Miss Avis

Q. Did you also consider the complainant for that position? A. I spoke to her about it, and I had considered her initially, but I felt she would not respond to the fact that there was a lower amount of salary than she was making. Also at that time she was in the process of looking for other work.

She had told me about two interviews that she had gone

'Also, the fact that Miss Crocker had been with the agency a little more than a year than she was.

Q. Then Miss Crocker was senior in position to Mrs. Carrion? A. Well, senior in terms of time employed. She wasn't senior—we have no senior ratings in our agency. She was working—if you use the word "senior" in terms of time employer, she had been there longer than Mrs.—

Q. When you say "there", do you mean— A. I mean at Lincoln Hospital.

Q. Was there any other reason that you chose Miss Crocker? A. The school who had known—

Q. Do you mean N.Y.U.† A. N.Y.U. They felt she was a suitable choice. Also I had some experience with Miss Crocker the year before because she had supervised two individual students from N.Y.U., as a field work

Raymond Cagan-Respondent-Direct

supervisor for N.Y.U. And in a direct liaison with N.Y.U. I was sort of given the responsibility of pulling together the field work students activities at Lincoln Hospital and tie them into what was going on at N.Y.U.

This was performed by attending weekly meetings at N.Y.U. and having conferences with faculty advisors, keeping the—at that time the Director of S Service, Miss Bernstein, informed me of what was go on.

Based on the fact that the two students that Miss Crocker had supervised, according to N.Y.U., and myself, were adequately trained I felt that she should have the position.

Q. Did you check Miss Crocker's personnel file before—A. Just superficially.

Q. Were you aware of any derrogatory comments in her personnel file? A. Not at that time.

Q. At what salary did you hire Miss Crocker in that position? A. At ten thousand five.

I might add that when I spoke to Miss Crocker in July about the possibilities, the position was being offered at nine thousand are. However, I was told that effective towards the end of August or early part of—at the beginning of September, I was told that I could increase her salary to ten thousand five hundred.

Q. Do you know what Mrs. Carrion's position was paying at that time? A. At that time, September 1, 196, her salary was \$11,000.

Q. And another position of a similar nature subsequently became vacant; isn't that true? A. That's right. We had decided that we were in a position to expand the student training area and we felt we could organize another unit.

Raymond Cagan-Respondent-Direct

I sent a memo around in the middle of August to the extent that there would possibly be another position open. I received no responses to it.

- Q. You mean to say that Miss Carrion did not apply for that position? A. I received no response from anyone.
- Q. Did you hire somebody to fill that position? A. Yes, 1 did.
 - Q. A: what salary, sirf A. \$11,000.
- Q. Do you know what Miss Carrion's salary was at that time? A. \$11,000.
 - Q. \$11,000† A. That's right.
- Q. Did you ever make any selection of personnel for other of these two positions for any considerations relating to race, creed, color or belief? A. No, I didn't.

That never entered into my considerations.

Q. Do you know whether at any subsequent date there became a vacancy of Director of Social Work at the installation called the Nighborhood Maternity Centre? A. Yes, I do.

In the month of December—I am not sure whether the beginning or middle—I became aware of the fact that there would be a vacancy as a Director of Social Services at the Neighborhood Maternity Centre.

Q. Were you called upon to play any role in the selection of a person to fill the job? A. Yes.

I was called upon to recommend somebody, make recommendations for that position. I was told this by Mr. Michelin, who was one of the co-directors of the Neighborhood Maternity Centre project.

Q. What was your role, to make recommendations?

A. To make recommendations and write up the recommendations as to whether I felt this person should be hired or shouldn't be hired.

Raymond Cagan-Respondent-Direct

Q. Would you further identify Mr. Michelin? A. Dr. Michelin is the Assistant Commissioner in the Department of Hospitals and the Administrator at Lincoln Hospital.

Q. Is he in charge of the hospital in that position? A. Yes, sir, he is.

Q. Whom did you recommend for that position? A. Mrs. Odessa Carrion.

Q. Was she hired for that position? A. No, she wasn't.

Q. Do you know who was? A. A Mrs. Morrison. I don't know her first name.

Q. Do you know Mrs. Morrison? A. I knew Mrs. Morirson—I know Mrs. Morrison from prior to my employment at Lincoln Hospital through professional contacts that I had.

If I may explain, prior to coming to Lincoln Hospital, I was employed with the Brooklyn Home for Children, which is a child-caring agency having a program of foster home care and institutional care. Our program was to accept children, boys and girls, up to the age of fourteen.

Mrs. Morrison at that time was a supervisor at Wyndham Children's Services, which is one of the child-care agencies in the City.

Brooklyn Home for Children accepted referrals from the Courts and from agencies, and through this kind of nature. One of our procedures before we accepted a child was to speak to the worker who was responsible for working with the child in the temporary placement, and Mrs. Morrision and her unit referred several children as directed by the Courts, referred several children who were being placed on a temporary basis. So I had occasion to run into her every once in a while to speak to her about a particular child.

Raymond Cagan—Respondent—Cross

Q. You met her on a regular basis? A. On a professional basis. These were face to face interviews.

Q. Is Mrs. Morrison a Caucasian? A. No. she is not.

Q. What is she? A. She is Black.

Q. Do you know whether she is still in the position as Director of Neighborhood Maternity Centre? A. Yes, she is.

Mr. Woici: No further questions. Commissioner Colgate: Counsel?

Cross-examination by Mr. Taylor:

Q. Mr. Cagan, you stated that the position of student unit supervisor for N.Y.U. students at Lincoln Hospital became available on July 1, 1967? A. That's right.

Q. That was when you moved out of that position into

your present position? A. That's right.

Q. You stated you passed around by word of mouth that the vacancy was available; is that right? A. That's right.

Q. Was one of the people to whom you passed around that word of mouth communication Mrs. Carrion? A.

That's right.

Q. Did she express an interest in that position? A. She did when we were speaking—when we first started to talk about it she did express an interest in it.

Q. N.Y.U. recommended some persons also for that posi-

tion? A. That's right.

Q. Ultimately Mrs.' Avis or Miss Avis Crocker was selected for the position; is that correct? A. That's right.

Q. The position was on the payroll of the Albert Emstein Medical College; is that right? A. True.

Raymond Cagan—Respondent—Cross

Q. When did that discussion take place, approximately, if you can recall? A. In July.

Q. When was that position filled? A. As of September 1st.

Q. When you say as of September 1st, does that mean that Miss Crocker reported for duty that day as student unit supervisor? A. That's right.

Q. When was she actually hired for that position? A. The last week in August. The last ten days. The latter part of August.

Q. When were you advised that the sum of \$10,500 would be available— A. Just about that period.

Q. Did you relay this intelligence to the complainant?

A. No, I didn't.

Q. You indicated on direct examination that you made a quote—you looked at her file superficially.

Did you read her personnel file? A. Miss Crocker's? Q. Yes. A. I did not read the part with reference to what Miss Bemmels had written, but I read her previous material.

Q. I thought you said that you read Miss Bemmels' report. A. Superficially, but I didn't pay attention. I assume you are asking me whether I really delved into it, reading it with deep interest.

Q. In other words, you weren't interested in a negative report? A. That is not true.

Q. Did you read the rest of her personnel file super-ficially? A. No.

Q. The only thing in the file you did not read superficially was Miss Bemmels' report? A. That's right.

Q. Do you know how many jobs Miss Crocker had before she came to the Lincoln Hospital? A. She had several jobs.

Raymond Cagan-Respondent-Cross

Q. Do you recall why she left those other jobs? Did you read that part in the file? A. Yes.

I can't spell it out verbatim. She found it difficult to take direction. She found it difficult to take guidance

and would not assume her responsibilities.

Q. You read that in the file and you knew you had a negative evaluation from her immediate supervisor at Lincoln Hospital and you hired this lady for student unit supervisor? A. Well, in all—

Q. Is that correct? A. That's right.

Q. In September of 1967, you said a second position for student unit supervisor became available? A. The latter part of August.

Q. I am sorry, latter part of August.

You said you sent out a memo with respect to this pending vacancy? A. I did.

Q. Do you have a copy of that memorandum? A. Not with me

Q. What did it say? A. That there is a possibility of a student—field work, student supervisor's—field work student instructor's job, position being open in September, if anyone was interested to contact me.

Q. What means was used to disseminate that memorandum? A. It was passed around with a routing slip.

Q. Do you know-well, let me ask you this:

You say it was passed around with a routing slip? A.

Q. I assume that those who read it initialled it or signed it? A. That's right.

Q. Then it was returned to you! A. That's right.

Q. Can you bring that to us the next hearing? A. I will.

Q. Do you know whether or not the complainant's

Raymond Cagan—Respondent—Cross

initials were on that routing slip? A. All of the—you mean in response?

Q. Yes. A. No, there was only two people that—when I returned to the office, there—when I got the routing slip there were only two people who initialled it and said they weren't interested.

I assumed by virtue of nobody else initialling it, nobody else was interested in it.

Q. The two people who initialled it indicated they were not interested? A. That's right.

Q. But their initials would indicate they had at least seen it? A. That's right.

Q. And you assumed by absence of other intitials that those whose initials did not appear had also seen it; is that right? A. Well, I would have assumed so.

Q. If you could make that assumption, what was the purpose of requiring initials in the first place? A. Well, it is a procedure that we follow, and the way the thing was worded if you are interested please notify me, and the fact that I have a couple of supervisors, two or three, that initial everything, and I have other supervisors that return material to me, that only initial things when they are directly told to initial it.

Q. Did you ever mention this possible vacancy to Mrs. Carrion? A. Directly?

Q. Yes. A. No, I didn't.

Q. You never discussed it with her; is that right? A. That's right.

Q. What was the salary available for that second vacancy? A. At that point, it would have been \$11,000.

Q. That was \$500 more than the complainant was at that time receiving; is that correct? A. That's right.

Q. Had she ever— A. When the positions would have started, it would have been the same.

Raymond Cagan—Respondent—Cross

Q. Knowing all of that you then advised Mrs. Carrion of the availability of this Director of Neighborhood Maternity Centre some time in December of 1967; is that right? A. Knowing that and knowing something else that as beginning with July 1st of 1967 I was thrown in a professionl relationship with Miss Carrion where we saw each other practically on a day-to-day basis and we started to look at cases together and we started to talk about personnel together and I became aware of her ability to handle that kind of a position, which as she learned and knew required a certain amount of administrative skill.

It was on this basis that I approached her and Ias a matter of fact, I think the first thing I gave Miss Carrion was the project that was written up and asked her to read it through and tell me if she was interested, and from that point we started negotiating.

Q. That was the project which was the operation of the Neighborhood Maternity Centre? A. Right, which

social service is a part of.

Q. You say you worked with her almost daily from July 1st? A. Well, almost daily. I may be a little-

Q. At least several times a week? A. At least we were sitting across from each other and talking to each other in the hall and so forth, and we were talking about professional areas. I became acquainted with her functioning at staff meetings and supervisors' meetings during this period of time.

Q. You then recommended Mrs. Carrion to Dr. Michelin as a possible Director of this Neighborhood Maternity Centre? A. I-if I may embellish on this a moment, I not only recommended it but I wanted it very much. To document this Mrs. Carrion and I sat down together

Raymond Cagan—Respondent—Cross

and I suppose you would call it a letter of agreement, whatever it was, and I—I had recommended verbally Miss Carrion to Dr. Michelin and at the time he said fine, submit her name, which I did.

Q. What was the salary available for that Neighborhood Maternity Centre position in December of 1967?

A. I was told that it was \$12,500.

Q. Do you know what Mrs. Carrion's salary was at that time in the position which she held, if you recall? A. I don't really know whether she was still at eleven five or eleven hundred or what.

Q. That position was vacant in December of '67—I mean was available in December of '67? A. Actually the position would have become available when the staff returned after the Christmas-New Year holiday.

Q. So that would be early, very early January of '68?

A. Right.

Q. When was that position filled? A. If-

Q. If you recall. A. If I recall, the month of April. I don't know 1st or 15th, whenever it was. Which I had nothing to do with, I might add.

Q. Do you recall receiving a copy of a letter from me

addressed to a- A. I can answer that.

Q. All right. A. On January 3rd or the 4th, Miss Carrion approached me and said that she would be willing to accept the position as Director of Social Service at Neighborhood—the Neighborhood Maternity Center at the salary discussed. Approximately ten days or a week, I don't know exactly, I did receive a letter special delivery registered telling me that she was confirming her conversation with me that she was willing to accept that position, if that is the letter that you are referring to.

Q. Was the letter which you just referred to from me?

A. No, no, from Mrs. Carrion.

Raymond Cagan—Respondent—Cross

Q. Do you know what the salary paid to the person hired for the position as Social Service Director of the Neighborhood Maternity Centre was? A. Now?

Q. Well, when they filled it in April of 1968. A. No, I don't because I was not included in the negotiations or I wasn't brought up except to be told that there was a new Director over there.

Q. Were you involved in any negotiations with Mrs. Carrion with respect to filling or possibly filling that position? A. I was.

Q. Up until approximately what time or what date did you cease being involved in those negotiations with respect to hiring Mrs. Carrion for that position? A. Again, it would be approximate, but I think it was just before the Christmas holiday when I was told that I had no right to hire, the hiring would be done by co-directors of the centre.

Q. The hiring would be done by the co-directors of the centre? But prior to that you were advised by Dr. Michelin to go out and hire somebody for that job? A. That's right. Or make recommendations.

Q. Or make recommendations, which was the same thing? A. Yes.

Q. So that this was somewhat of a reversal of the previous directive you had received from Dr. Michelin, would you say? A. Yes.

I didn't know you were answering a question.

Q. I didn't hear your answer. A. I said yes. I didn't know you were asking me a question.

Q. Do you know what the position as Director of Neighborhood Maternity Centre paid in December of 1967 to the person who last filled the job before it became vacant? A. I have never seen it in a memo, but I understand at that time it paid thirteen thousand.

Raymond Cagan-Respondent-Redirect

For example, when we refer to the workers that are working in the pediatric area, we say the pediatric social service unit of the Department of Social Service.

Q. Is any distinction made between the City worker and the Einstein worker in assignments or other professional areas? A. No, not in assignments or other professional

Q. They then are co-workers, aren't they? A. That's

right.

Q. Are you in any position, taking good personnel policies into consideration, to show any favoritism to any group of workers, either on the City or on Einstein— A. Am I in any position to show favoritism?

Q. In regard to considerations of seniority or other personal factors. A. No. As I explained before, my concept of seniority is in line with the person who has worked in the unit. The fact that it was raised on a payroll situation I have not looked at it from that viewpoint.

I have always interpreted it if a person has worked two years in the department and having a person who has worked one year then the person who has worked two years has seniority.

Q. In considering Miss Crocker for this position and determining that she was the senior person over Miss Carrion, did you take into consideration what payroll they may have been on? A. No.

That wasn't—as I said that wasn't the only consideration, but I never gave it a thought that she was on City

or she was on Albert Einstein.

Q. On cross-examination you stated that when you were considering Miss Crocker for that position, you were aware of an evaluation in her personnel file made by Miss Bemmels; is that true? A. That's right.

Raymond Cagan—Respondent—Redirect

That is true.

Q. What weight did you give to that evaluation? A. I didn't give any weight to that evaluation.

Q. Why not? A. From the day that Miss Crocker and Miss Bemmels had gotten together in her unit, there was a constant argument and bickering. How I know this was that first Miss Bemmels would approach me—this was well before my role as a Director of Social Service—and say that she couldn't direct Miss Crocker, Miss Crocker wouldn't pay any attention to her, and she wouldn't pay any attention to her and so on and so forth.

A couple of days later, figuratively, Miss Crocker would approach me at lunch or some place and say she couldn't get along with Miss Bemmels, Miss Bemmels doesn't pay any attention to her and doesn't let her talk and this sort of relationship persisted as long as I knew the two of them at Albert Einstein.

Q. Did you say that you had a lot of contact with Miss Crocker prior to July 1, 1967? A. Well, I had at least a year of contact, next to each other in terms—for one thing her two students that she was supervising were sitting with the students I was supervising in the same area.

There were many times that she came to me and discussed things of a frank nature or what the N.Y.U. policy was and so forth.

Q. I believe on cross-examination, you stated you did not start to have any contact with Miss Carrion until some time after July 1, 1967? A. Well, a very superficial one, because physically, we weren't even in the same building. I was across the street and she was in the main building.

Our contacts were primarily through the meetings, general or staff meetings that we attended, and occasionally

Raymond Cagan-Respondent-Redirect

in the hallways. We never sat down and had any conversation.

Q. In the position for the Director at the Neighborhood Maternity Centre, that is, the Director of Social Service, was it your charge to make recommendations to someone who was going to fill that position or was it your charge to go out and find someone to fill that position? A. I am sorry, I don't quite—

Q. With regard to the position that was vacant as Director of Social Service at the Neighborhood Maternity Centre, was it your responsibility, were you given the job of making recommendations to fill that position or were you given the job of finding someone to fill that position? A. I was told to refer people to be considered for the directorship of the social service area in the Neighborhood Maternity Centre, and also not only refer people but I might make recommendations as to whether I felt the person was qualified or not.

Let me explain why there is a distinction, too.

One of our resource areas that we have for filling vacancies is the New York State Employment Services, and when we put a job order through of this nature, they would refer certain people, and I would ask the—the two major points I would ask before I asked anything else was how long they had been in the field and whether they had a M.S.W. or not.

Then I would refer that person if I felt she met the basic requirements I would refer her to Dr. Michelin, who in turn would refer her to J.J. Smith.

Q. So then you wern't given the job of hiring somebody?

A. No, I wasn't.

Q. Didn't you find that somewhat peculiar as you were

Raymond Cagan-Respondent-Redirect

The Witness: Not directly.

Commissioner Colgate: This is the memo and

the two initials coming back?

The Witness: That's right.

Commissioner Colgate: The record will show precisely what the testimony is with regard to the credentials of both Mrs. Carrion and Miss Crocker, but I must admit from sitting here my impression certainly has been that Mrs. Carrion was more highly qualified for the position.

If you would care to comment on that, I would

appreciate it.

The Witness: I will say quite honestly, and I told this to Mrs. Carrion very recently, there is no doubt in my mind that she is much more qualified.

At that time I didn't think she was in terms of my own feeling that I could work with Miss Crocker, that I knew Miss Crocker and that I had had previous experience in the training of students with her.

Now, I don't think there would be any question whatsoever as to who was much more qualified and much more able to do the—

Commissioner Colgate: But we are talking about that moment in time, you see, sir. Not the subsequent ways—

The Witness: Well-

Commissioner Colgate: What this case is is a case of discrimination, and a person may discriminate at our time and then begin to change his views and see the light and thereafter never do it again.

Raymond Cagan-Respondent-Redirect

But we are still back at that particular time. I don't want to appear as being a hostile questioner, but I am not really satisfied as to what went through your mind at at time as to why you didn't hire Miss Carrion.

The Witness: The only thing I can tell you as I recall at that time was, one, I knew that the work that Miss Crocker had done with the students the years before, I didn't know what work Mrs. Carrion had done, and I felt that she would be most adequate in handling the student unit for us.

Commissioner Colgate: Yet later in September, you testified that you saw Miss Carrion almost daily starting in July and you didn't even make mention to her about this, or make sure that she understood that there was this other field work unit supervisor's position that was coming up?

The Witness: When I say July, during July and August I was out for a period of time on vacation

Commissioner Colgate: And I am sure she was, too, perhaps.

The Witness: That is why I sent the memo out, as a matter of fact, because I wasn't there when the memo went around.

Commissioner Colgate: Has your opinion as to the qualifications of Mrs. Carrion undergone any change since all of this happened back in—

The Witness: As I said before, I know Mrs. Carrion a lot better and much more professionally intimate at this point, and as I said to Miss Carrion and I told her that I had made a mistake when I put Miss Crocker into the position and I realized

PLAINTIFF'S EXHIBIT 26 - DEPOSITION OF ABRAHAM SILVEPBERG

Silverberg

7

make Lincoln Hospital a better hospital. That was the purpose.

- Q Did your personnel office do the hiring?
- A The personnel office did the hiring in the beginning and I did some hiring.

I had a man report to me who did the hiring for us.

Q If a person were being employed by Albert Einstein, what relationship would you have with that application for employment?

MR. MR. RIESEL: Could you break down as to who you are talking about, that is, clerical help, professional help; who are you talking about, and then ask him with reference to a specific person what relationship he would have.

MR. GRAY: Okay.

BY MR. GRAY:

- You said that you could not hire professionals is that correct?
 - A No, I did not.
 - Q Your office did not hire professionals, did they
 - A That is correct.
- Q Your clerical staff at Albert Einstein was hired by your offices; is that correct?

Commerce Reporting Company Inc.

Sommence Is Don und Contidant

181a

C

1

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Gonmerce Reporting Company Inc.

Yes.

24

25

1		Silverberg	32
2	Q	And then from Montefiore you went to I	incoln;
3	am I corr	ect in saying that?	
4	A	Yes.	
5	. Q	What is your educational background?	
6	A	High school, no college.	
7	Q	How long did you work for Albert Einst	ein?
8	A	This is my 16th year.	
9	Q	So that would be from 1958?	
10	A	I came in in 1959, actually. I am jus	t startin
11	my 16th y	year, my 16th year will be starting with	next .
12	month.		
13	٥	Are you an accountant?	
14	A	No.	
15	Q	You said you were familiar with the pl	aintiff,
16	Mrs. Carr	rion?	
17	A	Yes.	
18	Q	Did you play a role in her hiring?	
19		I don't know what you mean by my plays	
20		iring. I explained to you how it worked	
21	Q .	I guess that when she was initially hi	red she
22		d as a city employee?	
23	A	(No answer)	
24	Q	Would you have had any input into hir	ng her
	or did yo	ou have any function in that process?	

Gommerce Reporting Company Inc.

	Silverberg 33		
1	A No, I told you I signed the personal status		
2			
3	form and that is it.		
4	Q If they were a city employee would you still		
5	have signed the personal status form?		
6	A No, sir.		
7	Q So your first contact, your first professional		
8	contact would have been when she was transferred to the		
	Albert Einstein School of Medicine; is that correct?		
9	A Yes.		
10	Q You would have approved that?		
11	A Yes, in the fashion I have already described,		
12			
13	yes.		
14	Q That would be a perfunctory duty, that is,		
15	you would sign the personal status form; is that correct?		
16	MR. RIESEL: Objection, that is a leading		
	question which is a conclusion on your part. I		
17	really don't think the witness shold be forced to		
18	answer that question.		
19	Q Who would have selected her for the position?		
20	MR. RIESEL: Initially you mean?		
21	MR. GRAY: Yes.		
22			
23	MR. RIESEL: You mean who recruited her?		
24	MR. GRAY: Recruited her and hired her,		

Gommerce Reporting Company Inc.

•	
2	THE WITNESS: That would be the director
3	of the department.
4	Q When her status change care about would you have
5	simply received a status change form?
6	MR. RIESEL: Do you mean a change from the
7	City of New York to Yeshiva University?
8	MR. GRAY: I mean when Mrs. Carrion was
9	changed from the city budget to Yeshiva's budget.
10	MR. RIESEL: What is your question?
11	MR. GRAY: I'll state it again.
12	Q What role did you play at all in that change?
13	A No role at all.
14	Again, I signed the personal status form.
15	Q Could you have rejected that change?
16	A May I answer your question with a question?
17	Q Sure, go ahead.
18	A In terms of what, when you say could I have
9	rejected her; what are you talking about?
0	I could have rejected her for lack of money,
	lack of lines, but that would have been it.
1	Q So your role as to whether or not she would be
2	hired as an employee of Yeshiva would have been a question
3	as to whether there were resources available for that
4	hiring is that company

2

3

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

MR. GRAY: You don't object to that question, do you, Mr. Riesel?

MR. RIESEL: No.

Before Mr. Cagan became the Director of Social Services was an Albert Einstein employee?

Yes.

A

Yes.

Do you know what position he hel before then?

A I cannot give you the exact title but it had to do with student teaching. As I said, I remember that he was being paid by us and partially by NYU.

Do you remember how much he was being paid by Albert Einstein?

A No, but it was mentioned to me once and I am trying to think of our portion because I certainly was not interested in their portion.

I somehow remember something like \$10,000 but I do not think that is correct.

Would that have been from Albert Einstein in Q total?

Yes.

Would you know what his functions were as a student unit supervisor, if I may use that phrase?

I had an idea that he dealt with the students, A

Gommerce Reporting Conspany Inc.

Silverberg

2		

A Not to my knowledge.

3

Would your answer be the same, that you have Q no knowledge of Mrs. Carrion's application or interest in

5

becoming a student unit supervisor in September of 1967?

6

I have no knowledge of that.

7

Do you have any knowledge of the application

8

or interest of Mrs. Carrion in the position of a director-

9

ship of Social Serices for the neighborhood maternity center

10

A Yes, I do.

in December of 1967?

11

What knowledge do you have?

12

I know that Mrs. Carrion applied for the job,

13 14

she did want the position, that's it.

15

Did you meet with her?

16

Yes, I met with her and also a Dr. Michelin.

17

Did you play any role or would you have played any role in the decision to hire her for that position?

18

A No, sir.

19

Why not? Q

20

The only role that I could play in that decision.

21

was a budgetary role.

22

23

24

25

This job Mrs. Carrion was seeking was for the Neighborhood Maternity Center amd it was a grant-funded program run by Dr. J. J. Smith.

Gommerce Reporting Gompany Inc.

1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
8	
9	-
0	

22

23

24

25

He did the hiring.

- Q Whoever he would have selected, you would have simply had the role of signing the papers; is that correct?
 - A Yes, signing, yes.
- Q Do you remember those discussions with Mrs.

 Carrion that took place at that time about money?

Did you discuss with her the question of money?

A I remember that Dr. Michelin was there at one discussion along with Mrs. Carrion and myself.

My role was -- I really don't remember what the amount was but I remember telling her what the salary would be, I do remember that. The figure escapes me.

- Q Would the figure \$12,500 sound reasonable?
- A Yes, it rings a bell.
- Q Do you remember what her response was to that?
- A Yes, she felt that it was not enough money.
- Q Do you know how much that position was paying to the person who held that position Mrs. Carrion was seeking?
- A Well, I believe the name of the person was Evelyn Crump.

I think she was making more, I think she was making \$13,000 or perhaps maybe even \$13,500.

Q Why was it that Mrs. Carrion could only get

Gommerce Reporting Company Inc.

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

2 \$12,500?

A I really can't answer that. I am trying to remember whether it was the budget line or that Mrs.

Crump was there a number of years and went up on the scale, I just really can't answer that question.

- Q' Do you know who eventually filled that position?
- A Yes, it was Mrs. Morrison, I believe.
- Q Is that spelled M-o-r-r-i-s-o-n?
- A Yes.
- Q Do you know what she got for a salary?
- A No.
- Q You would have signed her the papers granting her the job; is that correct?
 - A Yes, I would have.
- Q So I assume that you just don't remember the figure but that you did know the figure at the time; is that correct?
 - A Right.
- Q If I were to say -- wait a minute, that might be objectionable. If I were to say \$14,000 would that refresh your recollection?
- A No. Somehow I just don't remember what Mrs.

 Morrison got. I should remember, I really should remember,
 but I just don't.

Commerce Reporting Company Inc.

25

PLAINTIFF'S EXHIBIT 26

Silverberg

1

2

4

5

6

8

9

10

11 12

13

14

15

16

17

18

19

20

21

23

24

25

Q So, the answer to this interrogatory is based on your knowledge through others that were actually involved with the decision to dismiss her in June of 1971; is that correct?

A That is correct.

I was not part of the dismissal in 1971.

I was no longer there.

Q How do you know what the reason was?

A I assume that they went back to the original firing.

May I ask a question?

MR. RIESEL: Well, you are not supposed to.

MR. GRAY: I would like to go off the record.

MR. RIESEL: Yes, that would be a good idea.

(Discussion off the record)

MR. GRAY: Back on the record.

In our discussions off the record it is agreed by both parties that the answer to Interrogatories shows that there was no independent cause for the discharge of Mrs. Carrion.

MR. RIESEL: So agreed.

Q Do you have any knowledge of Mrs. Carrion's work performance between the time that she was reinstated and the time of her second discharge?

Commerce Reporting Company Inc.

3

5

6

7

8

9 10

11

12 13

14

15

16

17

18

19

20

21

22

23

24

25

Would you repeat that? A

MR. GRAY: Reporter, read back that question.

(Question read)

THE WITNESS: I did not.

- You received no criticisms of her work? Q
- No criticisms whatsoever.
- To your knowledge she was not insubordinate during that period was she?
 - To my knowledge she was-not insubordinate.
- What was your knowledge of Mrs. Carrion's work performance prior to her discharge in 1968?
 - Mrs. Carrion w s a good worker. Very competent.
 - She was competent?
 - A Yes.
 - When did you leave Lincoln Hospital? Q.
 - February 1st, 1970. A
- I guess that means that you would not be aware Q of this letter to Mrs. Carrion from Dr. Lubell, would you?
 - A What is the date on it?
 - It is dated February 2nd, 1970.
 - A No, I am not.

MR. RIESEL: Can I see that?

MR. GRAY: Here.

Gommerce Reporting Gontpary Inc.

56

23 Q Were you her boss?

A

24

25 Q Did she say this to you?

Yes.

Commerce Reporting Company Inc.

1	Silverberg 49
2	A No, she did not say it to me, I think she
3	put it in a letter.
4	Q Okay.
5	In what way were you her boss?
6	Could you explain that to me?
7	A I was the overall administrator of the people
8	working at Lincoln Hospital. That's it.
9	Q You wrote to her saying that she was suspended
10	and she wrote back saying what; can you tell me that?
11	A I do not even think that she gave me the
12	courtesy of writing me back. I think she addressed the
13	correspondence to Dr. Lubell with a copy to me.
14	Q I show you a letter dated October 29, 1969
15	from Mrs. Carrion to Dr. Lubell. Is the letter to which
16	you have just referred?
17	A This is the letter.
18	MR. GRAY: I would like to have this
19	marked for identification as Plaintiff's Exhibit No.
20	1, today's date.
21	MR. RIESEL: No objection.
22	(Letter referred to marked Plaintiff's Exhibit No. 1, as of today's date,
23	for identification)

You received a copy of this letter, as I understand it; is that correct?

Commerce Reporting Conspany Inc.

24

25

	•
	,
	*
	-
	4
1	1
-	•
	•
1	1
1	
1	1
1	4
1	
1	ŕ
1	
1	
18	•
10	
19	•
_	
20	J
21	l
2	9

24

25

and I'm now referring to clerical and secretarial help were doing the job that they were supposed to do.

- Q Clerical and secretarial?
- A I went into other fields, too.

If we had some aides that were under my jurisdiction I would deal with them also.

- Q By "aides" what do you mean?
- A Well, we had some people, I'm trying to think of the names of the girls that we had in the program.

 They were not nurses and they were not LP's. They were under me although they served a function in the Department of Obstetrics and Gynecology. They would come to me, not in terms of the patient but in terms of their pay, their sick days, any problems that they had other than patient care, that was my role.
- Q You also say secretarial and clerical is that correct?
 - A Yes, and aides also.
- Q Social workers would be another one, is that correct?
 - A They were not directly under my jurisdiction.
 - Q Whose jurisdiction were they under?
- A They would be under Mr. Cagan, who would then come to me.

Commerce Reporting Company Inc.

2

Q

3

4

5

6

7

8

10

11

12 13

14

. 15

16

17

18

19

20

21

22

23

24

25

Did you have any other administrative functions besides the employment status and the pay status of Albert Einstein's clerical and secretarial help and aides?

- A Yes, I had other functions.
- Q What were they?

Okay.

A To see that the budget was kept in line in terms of the money spent by each department.

I prepared budgets for each department in the hospital. I saw to it that they did not over-spend their budgets. I would also oversee what type of equipment they would buy and if they were allowed to buy it.

- Q You were called the liaison officer for the hospital were you not?
 - A That is correct.
- Q That means, I assume by the word "Liaison"
 the inter-relationship between Yeshiva or Albert Einstein
 College of Medicine and Lincoln Hospital; is that correct?
 - A Yes.
- Q Besides approving this bidgetary line, did you have any other role in the hiring of social workers?

MR. RIESEL: Directly or indirectly, are you talking about? Please be more specific.

MR. GRAY: Directly.

Gommerce Reporting Gonepany Inc.

3

5

6

7

8

9

11

12

13

14

15

16

17

18

19

20

21 22

23

24

25

THE WITNESS: No.

Q Indirectly?

A Yes.

O How so?

A Well, to check the budget line, to see that it was within our budget and to make sure that the salary was correct.

Q Would it be proper to characterize you as the "money man"?

MR. RIESEL: Objection to that. Objection as to form.

You can answer that if you can.

A (No response)

Q Have you ever characterized yourself as the "money man"? Answer yes or no.

A Yes.

Q You received a copy of Mrs. Carrion's letter, which has been identified as Plaintiff's Exhibit No. 1 for identification, today's date; is that correct?

A Yes.

Q Upon receipt of this you wrote-her a letter informing her that she was terminated, discharged; is that correct?

A I believe so.

Gomme Reporting Company Inc.

- 2
- 3
- 5
- 6
- 7
- 8 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- Sand
- 24
- 25

- As far as you are concerned you did have the authority to take that action; is that correct?
 - Yes.
- Did you have a basis upon which to base such a suspension?
- You will have to clarify that. I do not know what you mean by that, Mr. Gray.
 - Okay.
- Her statement in the letter, if I may paraphrase it, is this: She states in the letter that Mr. Silverberg has no basis on which to base such a suspension.
- My question to you is, in your opinion did you have such a basis to suspend her?
 - Yes, I did.
 - Where does your authority to suspend come from?
 - MR. RIESEL: Is that an issue in this case, that he did not have the authority to suspend her?
 - MR. GRAY: I think that is a question in this case and I think in this case it is an issue here.
 - MR. RIESEL: Can you answer that?
 - THE WITNESS: Yes.
 - MR. RIESEL: Please answer it.
 - Gonmerce Reporting Company Inc.

24

25

THE WITNESS: I had the right to fire her.

I was given the right to fire her, I ran the place.

MR. RIESEL: I did not hear what you said, you trailed off.

THE WITNESS: I ran the place.

MR. RIESEL: Are you saying that you ran

Lincoln Hospital?

THE WITNESS: That part of Lincoln Hospital which was part of Albert Einstein, yes.

MR. RIESEL: You ran that?

THE WITNESS: That is correct.

BY MR. GRAY:

Q Did you make any attempts to tell Mrs. Carrion that you did have the authority that she was questioning you about?

MR. RIESEL: At what point in time?

MR. GRAY: After October 29th and within

the next two weeks.

THE WITNESS: No, I did not.

Q Did you make any attempt at all to -- Withdrawn.

In her letter to Dr. Lubell she says, "I am requesting clarification of this matter, as well as the charges I placed against the workers in Social Service."

Commerce Reporting Company Inc.

2

3

4

5

6

7 8

9

10

11

13

14

15

16

17

18

19

20

21

22

_ .

24

25

Did you ever, having received a copy of this, attempt to clarify the matter for her?

- A To my recollection I did not.
- Q Do you know whether Dr. Lubell did?
- A I don't know.
- Q Why did you attempt to clarify it?
- A At the time I was concerned with one thing. I had groups coming to me. Everyone was upset and everyone was excited and I felt the best thing to do was to keep her out of there until Mr. Cagan came back.
 - Q So you fired her, is that correct?
- A I did not fire her initially. I suspended her at first.
- Q After receiving her letter, or I should say a copy of her letter which she mailed to Dr. Lubell asking for a clarification of your authority to suspend her you made no effort to clarify, did you not?
- A She did not ask me for clarification. She did not recognize me. She did not send me a letter, she sent a letter to Dr. Lubell asking him to clarify. She did not ask me to clarify. She merely sent me a carbon copy.
- Q In matters involving patient care at the hospital who would have been involved in matters of patient care? And could you well me all of the

Gommerce Reporting Goneparty Inc.

Silverberg

	-
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	1
18	
19	
20	
21	
22	

23

24

25

suspension of her that you felt that this was insubordination; is that correct?

MR. RIESEL: Objection to that question.

Furthermore, it is a leading question and you have

two or three questions in there and you just made

a contradiction in your statement to the witness.

Reporter, read back that question. I want to hear that again.

(Question read)

MR. RIESEL: Read the next to the last question back.

(Preceding question read)

MR. RIESEL: My objections to that question were on the record earlier.

I also object on the basis that we have already established that Dr. Lubell was head of Lincoln hospital for the city at that time.

If you have to ask him a question, which I must say I'm not altogether happy with, but I guess you deserve an answer, why don't you ask him this.

was the sending of the letter to Dr. Lubell
of in itself insubordination?

MR. GRAY: I will adopt that question.

Gommerce Reporting Company Inc.

Silverberg 1 2 MR. RIESEL: You may answer the quistion 3 that Mr. Gray adopted. THE WITNESS: Yes, as far as I was concerned. 5 6 Why did you feel that? A (No response) 7 8 Why do you believe that? I believe it because Mrs. Carrion failed to 9 recognize that I was the administrator at the time. There 10 were other times when she came to me and she felt that 11 I was the administrator. 12 What were those times? 13 Well, for example, when she came to talk to 14 me about salary with respect to her job. 15 This was with respect to the job at the Neighbor-16 hood Maternity Center, is that correct? 17 Yes. 18 I believe it was your testimony that you had no 19 role in her hiring as far as the Neighborhood Maternity 20 Center; is that correct? 21 That is correct. 22

Have you ever fired anyone besides Mrs. Carrion? MR. RIESEL: At Lincoln Hospital? MR. GRAY: At Lincoln Hospital.

Gonmerce Reporting Gonzpary Inc.

23

24

25

Silverberg

1

2

3

4

5

6

her?

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Was the sole reason for your discharge of Mrs. Carrion the fact that she did not recognize your authority to suspend her or questioned your authority to suspend

Would you repeat that question?

foundation for that question.

- Wes the sole reason for your discharge of Mrs. Carrion the fact that she questioned your authority to suspend her?
 - The sole reason for my firing --

MR. RIESEL: The question is this: fire her only because she questioned your anthority or for any other reason or for a compination of reasons?

THE WITNESS: It was a combination of what had been taking place and her insubordination. As far as I was concenred I called it insubordination.

Okay.

What had beer taking place? Could you tell me what had been taking place, in brief?

Well, I had a number of groups coming in to me all from Social Service, they were all Social Service people. They came in to me telling me that Mrs. Carrion was maligning Mr. Cagan and asking people to talk against

Gonnnerce Reporting Gonepary Inc.

-		
7		
a		
-		

him.

One group was a city group. They came in to object. They objected that she was intimidating one of the girls and trying to tell the girl to say that she had done something with Mr. Cagan.

One of the group of her peers said that she was not acting in the way a social service worker should act and that they did not want her to remain any more.

Q Okay.

Now, to get back to my question. Did you determine that the insubordination was the refusal of Mrs.

Carrion to recognize your authority or the questioning of your authority? Was that the sole grounds by which you suspended her?

MR. RIESEL: That question has already been answered.

MR. GRAY: I would like to ask a hypothetica question.

Q If all of the allegations and charges about Mrs.

Carrion had been proven to be false would you still have fired her for insubordination?

MR. RIESEL: Objection to that question.

There has been no foundation, there is no basis on
which you can ask that question, there is no basis

Gonmerce Reporting Gontpary Inc.

for which you could ask a question of that nature.

- Q This statement was that it was a combination of things; is that correct?
 - A Yes.
- Q In your answers to interrogatories and in your testimony you say that Mrs. Carrion, and let me change that right now, let me read the answer in the interrogatory to you.
 - A Okay.
 - I am now reading to you from the interrogatory.
 - Job action or threats made by District

 Council 37 or any officer, agents or

 members thereof regarding plaintiff Odess

 Carrion.
 - A delegate representing District Council

 37 of the AFSCME and two city employees
 employed at Lincoln Hospital complained
 of harassment of city workers at Lincoln
 by the plaintiff Odessa Carrion.

"The union threatened, unless action was taken against her to prevent the continued harassment of city employees that a work stoppage would be called."

Gonmerce Reporting Gonepary Inc.

20

21

22

23

24

25

Is that correct, Mr. Silverberg?

- A That is correct.
- Q When did the union make such a threat?

A I cannot give you the date but during that period of time some people came down to my office to talk to me.

Those girls brought a gentleman down with them, but his name escapes me and that is when he made that threat.

- Q Was it Gary Foster?
- A I think so, that sounds like him.

MR. RIESEL: Don't guess, please be sure.

THE WITNESS: That was the man, the reme sounds familiar. I think that was the man.

- Q Do you remember that meeting?
- A Yes, I do.
- Q What was the nature of that meeting?
- A The nature of the meeting was one which was called by them to come down to complain to me about Mrs. Carrion.

Mr. Foster told me that if we don't do something about Mrs. Carrion and her intimidation of his workers, that he threatened me with a strike.

Q Was that a grievance hearing?

Gonimente Reporting Company Inc.

know what I am trying to say to you?

Q Yes.

A This may have come later on after more conversations.

O When she came in to see you--

MR. RIESEL: We are speaking about

Sanchez?

MR. GRAY: Sanchez.

Q -- What exactly was the nature of her complaint with Mrs. Carrion?

A Now, this is a little bit confusing to me for one reason. There were two girls that came at the time.

Miss Sanchez, and Miss--if you give me the name I would remember.

O Kuilen.

A Kullen, Catheri : Kullen. They came to me, and the complaint was a double complaint. They both complained to me. One, whether Miss Sanchez, or Miss Kullen, I don't remember which one said she was pressured by Mrs. Carrion to press charges against Mr. Cagan for doing immoral things to her. Whether it was Miss Sanchez or Miss Kullen; I don't remember. But, they were both there.

She said she would not do this, this was not

Gonamerce Reporting Company Inc.

Silverberg

	I
1	۱
2	
3	
4	
5	
6	
7	
8	
5	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	

20

21

22

23

24

25

nature of the charges, and with what body they were filed with.

MR. GRAY: I am going to pass on that, right now.

MR. RIESEL: Off the record.

(Discussion off the record.)

- Q Mr. Silverberg, is there any written basis
 upon which you based your authority to fire Mrs. Carrion.
 - A I don't understand.
- Q I am sorry. Upon what basis do you contend that you have the authority to fire Mrs. Carrion?

A I am the boss. I don't understand your question, Mr. Gray. I ran Lincoln Hospital for the school. I have told you that repeatedly. I was the authority. I have the right to do that.

Q I think I may have asked this question before.

Is there a job description for liaison officer?

A There is not.

Q Is there anything written regarding your duties--what were your duties and powers at Lincoln Hospital?

- A There is none.
- Q How are strikes called by the unions at Lincoln.

 General Reporting Company Inc.

Commerce Reporting Company Inc.

Do you know whether the contract that the city

Q

2

MR. GRAY:

I have no further questions at this time.

MR. RIESEL: I have a few questions

on cross-examination.

22

23

24

25

CROSS-EXAMINATION BY MR. RIESEL:

Commerce Reporting Company Inc.

[Same caption]

ANSWERS TO INTERROGATORIES

Defendant Yeshiva University hereby answers the interrogatories of the plaintiff pursuant to Rule 33 of the Federal Rules of Civil Procedure:

- 1. The plaintiff Odessa Carrion was dismissed for insubordination.
- 2. The plaintiff Odessa Carrion was dismissed by Yeshiva University on or about July 4, 1971 because of her insubordination in 1969.
- 3. The plaintiff Odessa Carrion earned \$18,965.03 per annum at the time of her discharge on June 4, 1971.
- 4. A delegate representing District Council 37 of AFSCME and two city employees employed at Lincoln Hospital complained of harassment of city workers at Lincoln by the plaintiff Odessa Carrion. The Union threatened that unless action was taken against Odessa Carrion to prevent the continued harassment of members of the Union and city employees, a work stoppage would be caused.
- 5. No disciplinary action was taken by Yeshiva University or Lincoln Hospital against District Council 37 or any of its officers, agents or members thereof because of the threataned job action or complaint set forth in answer to Interrogatory No. 4.
- 6. During the period from October 1967 to March 1968 plaintiff received part of her salary from the City of New York.

- 7. The defendant Yeshiva University does not believe that any flag was flown at or over Lincoln Hospital in the period from October 1967 to June 1971.
- 8. Signs on the outside of Lincoln Hospital indicated that the building was a part of Lincoln Hospital during the period from October 1967 to June 1971.
- 9. Interrogatory No. 9 repeats the question set forth in Interrogatory No. 8.
- 10. To the extent that Interrogatory No. 10 is not answered below, it is objected to because it is unduly burdensome, lacking relevancy and not calculated to produce relevant evidence.

There were approximately 2000 positions (job slots) existing at Lincoln Hospital from October 1967 to June 1971.

Approximately 50% of the employees at Lincoln Hospital during this period were paid directly by the City of New York and the remainder were paid directly by Yeshiva University.

Yeshiva University did not maintain any records which would indicate the race of any person filling any position.

ll. The following holidays were observed by all departments and individuals at Lincoln Hospital: New Year's Day; Washington's Birthday; Lincoln's Birthday; Nemorial Day; Independence Day; Labor Day; Columbus's Birthday; Veteran's Day; Election Day; Thanksgiving; Christmas; and Martin Luther King Day.

PLAINTIFF'S EXHIBIT 27

- 12. In response to the questions posed by Interrogatory No. 12, all items enumerated therein were supplied by the City of New York. However, it should be noted that there were certain exceptions for limited amounts and for limited times when the items in question were supplied by Yeshiva University.
- 13. To the extent that Interrogatory No. 13 is not answered below, it is objected to as being unduly burdensome, irrelevant and not calculated to produce relevant information.

All official forms used by social workers or their supervisors in the Out-Patient Department of Social Service at Lincoln Hospital were printed and paid for by the City of New York.

14. To the extent that Interrogatory No. 14 is not answered below, it is objected to as unduly burdensome, irrelevant and not calculated to produce relevant information.

A representative affiliation contract is annexed hereto as Exhibit A.

15. The policies with respect to the type of problems social workers would handle were set and developed primarily by Yeshiva University.

The policies with respect to financial standards for eligibility for free treatment were primarily set and developed by the City of New York.

The policies with respect to practices regarding referral of cases to city, state, federal and private agencies were primarily set and developed by Yeshiva University.

The policies and practices at Lincoln Hospital during the period in question were all, to some extent, a joint product of City and University consultation and work.

- 16. Local No. 37, AFSCME, does not have a collective bargaining agreement or contract with officials of Yeshiva University or New York University with respect to its members at Lincoln Hospital. It does have a contract with the City of New York.
- 17. The plaintiff Odessa Carrion did have certain supervisory powers over persons employed by the City of New York at Lincoln Hospital.
- 18. Mr. Abraham Silverberg was the Liaison Administrator for Yeshiva University at Lincoln Hospital and to that extent one of his responsibilities was the relationship between the University and the City of New York.
- 19. The persons engaged in the conduct described in Interrogatory No. 4 were employees of the City of New York. Those individuals included: Mr. Gary Foster, Miss Manning, Mrs. Morales, Ms. Shirly Sanchez and Ms. Kathleen Colleen.
- 20. Abraham Silverberg had knowledge that the plaintiff had filed charges of racial discrimination with the City of New York.
 - 21. See answers to Interrogatories No. 2 and 20.
- 22. There were no other instances as described in Interrogatory No. 22.
- 23. This Interrogatory is not applicable. See answer to Interrogatory No. 22.
- 24. The plaintiff's salary was fixed by Yeshiva University.
 - 25. Yeshiva University undertook to provide social

PLAINTIFF'S EXHIBIT 27

work services at Lincoln Hospita' uring the period from October 1967 to 1971 and such undertaking was in conformity with its agreement with the City of New York.

- 26. Yeshiva University did not conduct any hearing with respect to its discharge of Odessa Carrion in actober 1969 and June 1971.
- 27. The plaintiff's medical insurance was paid by Yeshiva University during her periods of employment with the . University.
- 28. It is not believed that the plaintiff was provided with a New York City identification card while she was . employed by Yeshiva University.
- 29. The plaintiff, as other employees of Yeshiva University, received free medical, dental and optical services at Lincoln Hospital's Employee Health Services facility.
- 30. Yeshiva University employees at Lincoln Hospital have not been suspended during the periods covered by the affiliation contracts.

ABRAHAM SILVERBERG

INTERROGATORIES

To: Daniel Riesel, Esq.
425 Park Avenue
New York, New York 10022

The Plaintiff requests that the Defendant Yeshiva University, by an officer or agent thereof, answer under oath, in accordance with Rule 33 of the Federal Rules of Civil Procedure, the following interrogatories.

- State why plaintiff edessa Carrion was dismissed
 Yeshiva University on or about October 31, 1969.
- State why plaintiff Odessa Carrion was dismissed
 Yeshiva University on or about June 4, 1971.
- 3. State the salary which plaintiff Odessa Carrion was receiving from or through Yeshiva University or Lincoln Hospital prior to her dismissal on June 4, 1971.
- 4. State the nature of any complaints or job actions or threats thereof made in October 1969 by District Council 37 of AFSCME, or any officers, agents, or members thereof, regarding or concerning plaintiff Odessa Carrion.
- 5. State the nature of any dis iplinary action taken by Yeshiva University or Lincoln Hospital against District Council 37, or any officers, agents or members thereof, regarding or growing out of any actual or threatened job action or complaint described in answer to Interrogatory 4.
- 6. State whether, at any time when she was working at Lincoln Hospital, plaintiff received all or part of her salary directly from the City of New York. (Your attention is directed in particular to the period from October 1967 to March 1968).
- 7. State whether, in the period from October 1967 to June 1971, the flag of the City of New York was flown at or over Lincoln Hospital.
- 8. State whether, in the period from October 1967 to June 1971, signs in front of or affixed to Lincoln Hospital identified the hospital as being connected with the City of New York. Describe any such signs.

- 9. State whether, in the period from October 1967 to June 1971, signs in front of or affixed to Lincoln Hospital identified the hospital as being connected with the City of New York. Describe any such signs.
- at acoln Hospital from October 1967 to June 1971, and state for each (a) whether the employee was paid directly by the City of New York, the State of New York, Yeshiva University or other source (identify), (b) state by whom the employee was supervised, (c) state whether the employee worked with, or would have been in frequent contact with, the social workers or their supervisor in Out-Patient Department of Social Service, (d) the name and race of each perso filling that position.
- 11. State which dates, such as Christmas, July 4, etc., were recognized as paid holidays at Lincoln Hospital between October 1967 and June 1971. State whether different holidays were recognized for different departments or individuals, and explain.
- 12. State which of the following items were used by or available to social workers or their supervisor in the Out-Patient Department of Social Service at Lincoln Hospital between October 1967 and June 1971, and state whether the item was paid for and provided by the City of New York.

 Yeshiva University, or another source (identify): (1) desks,

 (2) chairs, (3) paper, (4) pencils, (5) typewriters, (6) mimeograph machines, (7) xerox machines, (8) paper clips (9) rubber bands, (10) staplers, (11) lamps.

- 13. List each of the forms used by social workers or their supervisor in the Out-Patient Department of Social Service at Lincoln Hospital between October 1967 and June 1971, and for each state whether the form was prepared by the City of New York. Yeshiva University, or another source (identify), and (2) whether the form was printed by, or at the expense of, the City of New York, Yeshiva University, or another source (identify).
- 14. For each year from 1967 to 1971, state (a) the total amount received by Yeshiva University from the City of New York for the operations of Lincoln Hospital, and (b) the total expenditures by Yeshiva University for the operations of Lincoln Hospital.
- 15. State by whom (City of New York, State of New York, Yeshiva University, other (identify, the following policies were set regarding social workers and their supervisor, at Lincoln Hospital between October 1967 and June 1971: (a) what types of problems social workers would handle, (b) financial standards for eligibility for free treatment, (c) practices regarding referral of cases to city, state, federal and private agencies.
- 16. State whether the AFSCME, Local No. 37, with regard to its members at Lincoln Hospital, has a contract or negotiates regarding terms and conditions of employment with officials of Yeshiva University, New York University, or the City of New York.
- 17. State whether, when she was employed by Yeshiva University, plaintiff had any primary or incidental supervisory power over any persons employed by the City of New York, including but not limited to clerks, orderlies,

secretaries, etc.

- 18. State whether, between October 1967 and June of 1971, one of the responsibilities of Mr. Abraham Silverberg was for liaison, or relations, between Yeshiva University and the City of New York.
- 19. State the names of any persons engaging in the conduct described in Interrogatory 4, and state whether each of these persons was an employee of Yeshiva University, the City of New York, or another (identify).
- 20. State whether, at the time of plaintiff's dismissal in October 1969, the person or persons who dismissed her knew she had filed charges of racial discrimination with city, state, or federal officials.
- 21. State whether, at the time of plaintiff's dismissal in June 1971, the person or persons who dismissed her knew she had filed charges of racial discrimination with city, state or federal officials.
- 22. List and describe each and every instance during the period when Yeshiva University was affiliated with Lincoln Hospital when the University suspended one of its employees because of threats by other persons at the Hospital to go on strike or take a job action unless such employee was suspended or discharged.
- 23. State, regarding the incidents described in Interrogatory 22, whether the persons making such threats were
 disciplined for such conduct.
- 24. State whether the salary for the position or positions held by plaintiff when she was employed by Yeshiva

University was fixed, in whole or part, by the City of New York or its Health and Hospitals Corporation.

- 25. State whether, pursuant to its agreement with the City of New York or any rule or regulation, Yeshiva University undertook or was obligated to provide social work services at Lincoln Hospital during the period from October 1967 to June 1971.
- University regarding the dismissing of plaintiff in October 1969 and June 1971, and state, with regard to each,

 (a) who was present at the hearing, (b) whether plaintiff was given notice of the hearing, (c) whether plaintiff was informed of the charges against her at or prior to the hearing,

 (d) whether plaintiff was allowed to call or examine witnesses at the hearing, (e) whether plaintiff was afforded an opportunity to be represented by counsel at the hearing, (f) whether the hearing was held before or after her dismissal.
- 27. State by whom plaintiff's medical insurance was paid when she was employed by Yeshiva University.
- 28. State whether plaintiff was provided with a New York City identification card or form for use in the hospital while she was employed by Yeshiva University.
- 29. State whether plaintiff and/or other Yeshiva employees at Lincoln Hospital were, in connection with that employment, provided with free medical, dental, and optical services by the City of New York or its Health and Hospitals Corporation.

30. State each instance during the period when Yeshiva University was affiliated with Lincoln Hospital in which an employee of Yeshiva at the hospital was suspended, with or without pay, and the reason for such suspension.

PLEASE TAKE NOTICE that a copy of such answers must be served upon the undersigned within 30 days after the service of these interrogateries.

Dated: May 4, 1974

JACK GREENBERG

JAMES C. GRAY, JR.
10 Columbus Circle
New York, New York 10019
(212) 586-8397

Attorneys for Plaintiff

PLAINTIFF'S EXHIBIT 28 - REQUEST FOR ADMISSION OF FACTS AND RESPONSE

[SAME CAPTION]

REQUEST FOR ADMISSION OF FACTS

To: Daniel Riesel, Esq. 425 Park Avenue New York, New York 10022

Plaintiff Odessa Carrion requests defendant Yeshiva
University within 30 days of this request to admit, for the
purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial,
the truth of the following facts:

- 1. Between October 1967 and June 1971 the Lincoln Hospital, including the land on which it was located, and all buildings and permanent fixtures, were comed by the City of New York or the Health and Hospitals Corporation thereof.
- 2. Prior to 1965 the position of Social Worker Supervisor in the Out-Patient Department of Social Service of Lincoln Hospital was or would have been held by an employee of the City of New York.
- 3. Prior to 1965 social workers and their supervisors in municipal hospitals such as Lincoln Hospital were employees of the City of New York, rather than of the school or other private institution connected with that hospital.
- 4. Since January 1, 1974, the position of Social Worker Supervisor in the Out-Patient Department of Social Service of Lincoln Hospital has been held by an employee of the City of New York.
- 5. Since January 1, 1974, social workers and their supervisors in municipal hospitals such as Lincoln Hospital have been employees of the City of New York, rather than of the school or other private institution connected with that hospital.

PLAINTIFF'S EXHIBIT 28

- 6. (a) While employed by Yeshiva University plaintiff received, at nominal or no cost, coupons printed by the City of New York, or its Health and Hospital Corporations, which entitled her to meals prepared by and at the expense of the City or Corporation for persons working at the hospital, (b) these coupons were printed by the City or Corporation. (c) any sum paid for such coupons was paid to said City or Corporation.
- 7. (a) While employed by Yashiva University. plaintiff if she wished to apply for a leave of absence, was required to make application on a form prepared and printed by New York City or 1.5 Health and Hospitals Corporation, (b) one such form in use bore the form number S.R. 70 500N -01 1 01965(71).
- 8. (a) While employed by Yeshiva University messages for plaintiff were recorded on forms prepared and printed by New York City or its Health and Hospitals Corporation, (b) one such form in use bore the form number H.H.C. 17-040(71).
- 9. While employed by Yeshiva University plaintiff was required to or did use, in connection with her employment, the following forms prepared and printed by New York City or its Health and Hospitals Corporation (a) the "Face Sheet" for patient history and general information, (b) the "Green Sheet" for patient social history and problems. (c) the Pink Slips" for reference to welfare.

Dated: May 4, 1974

JACK GREENBERG

JAMES C. GRAY, JR.
Suite 2030
10 Columbus Circle
New York. New York 10019
(212) 586-8397

Attorneys for Plaintiff

DEFENDANT YESHIVA UNIVERSITY'S RESPONSE TO ADMISSIONS

Defendant, YESHIVA UNIVERSITY, by its attorneys, hereby answer the plaintiff's request for admissions.

- 1. Admitted except with respect to all permanent fixtures contained in said buildings.
 - 2. Admitted.
- Admitted only with respect to Yeshiva University's operations at Lincoln Hospital.
 - 4. Admitted.
- 5. Admitted except with respect to the exact date set forth in the fifth request for admission.
- 6. (a) Admitted to the extent that plaintiff was entitled to receive at a nominal cost, coupons printed by the City of New York, which entitled her to meals prepared at the expense of the City for persons working at the hospital.
 - (b) Admitt ...
- (c) Admitted to the extent that purchases were actually made from the City.
 - 7. (a) Admitted.
 - (b) Admitted.

PLAINTIFF'S EXHIBIT 28

- 8. (a) Admitted to the extent that some messages were recorded on forms prepared and printed by the City of New York.
 - (b) Admitted.
 - 9. (a) Admitted.
 - (b) Admitted.
 - (c) Admitted.

Dated: New York, N.Y. June 17, 1974

Yours, etc.

DANIEL RIESEL

Attorneys for Defendant YESHIVA UNIVERSITY

By: F. Marin P. Kasa

425 Park Avenue New York, N. Y. 10022

TO: JAMES L. GRAY, ESQ.
Attorney for Plaintiff
N.A.A.C.P.
Legal Defense & Educational Fund, Inc.
10 Columbus Circle
New York, N. Y. 10019

WILLIAM C. PORTH, ESQ.
Attorney for Defendant
New York University
Office of Legal Counsel
40 Washington Square South
New York, N. Y. 10012

ACREEMEN made this

19--6

THE CITY OF NEW YORK, a municipal corporation (hereinaster referred to as "the City"), acting by and through the Commissioner of Hospitals of the City of New York (hereinaster referred to as "the Commissioner"), and YESHIVA UNIVERSITY, a membership corporation, organized and existing under the laws of the State of New York and having its principal office at 55 Fifth Avenue, New York, N.Y., (hereinaster referred to as the Affiliate").

day of day a - 1969, between

WITNESSE H:

WHEREAS, the City wishes to continue to operate Lincoln Hospital, (hereinafter referred to as "the Hospital") as a general hospital facility and to assure the provision of good patient care which is the prime concern of the City; and

WHEREAS, an adequate intern and residency training program and the pursuit of research are regarded as essential components of and incidental to good patient care at the Hospital; and

WHEREAS, the City has requested and the Affiliate is willing to provide the professional services essential for such medical care, excluding psychiatry, and to supervise the intern and residency programs as hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual promises herein contained, the parties hereto agree as follows:

Tem - on wests

1. OBLIGATION OF THE CITY TO OPERATE THE HOSPITAL

operate the Hospital, with adequate personnel and sufficient supplies, including all the physical facilities of the buildings, equipment and premises presently or hereafter comprising the Hospital, as a general hospital in accordance with the New York State Hospital Code, the Health Code of the City of New York, and in compliance with all statutes and regulations promulgated and enforced by the State of New York and the City of New York or any of its agencies. In addition thereto, the standards of the Joint Commission on Accreditation of Hospitals shall be complied with, and, where applicable to the various training programs, the rules and regulations of the Council on Medical Education of the American Medical Association shall be observed.

DUTIES TO BE PERFORMED BY THE AFFILIATE

2.

- I. The City hereby retains the Affiliate to provide at the Hospital:
- (a) Such services by physicians and dentists as are necessary

 for the operation of all clinical activities, including in-patient services,

 out-patient services (including satellite clinics approved by the Commissioner)

 the emergency service, the admitting unit and all related services including

 employee and student nurse health services (except as herein otherwise

 excluded).
- The complete services of home care (except as otherwise (b) provided in this agreement), diagnostic and therapeutic radiology, anesthesiology including inhalation therapy, dental services, electrocardiography, electroencephalography, the laboratories of pathology, chemistry, microbiology, histology, cytology, homatology and clinical pathology, operation of the blood bank, physical medicine and rehabilitation service, social service, medical library and medical record room. In the aforesaid areas, the services of mortuary caretakers, messengers, institutional aides and all related housekeeping services requisite for the aforesaid operation of these departments shall be provided by the City, at its own expense. The operation of the medical records department shall be in accordance with the standards of the Joint Commission on Accreditation of Hospitals, and if approved by the Commissioner the Affiliate will provide additional forms necessary for the efficient maintenance of medical records.

PLAINTIFF'S EXHIBIT 29

- (c) The Affiliate will undertake to supervise, under the general supervision of the Commissioner, the out-patient department, the emergency service, the admitting unit and the organization and direction of the medical records department; but the City shall continue to provide and pay for non-professional personnel in those departments.
- (d) The operation of a night clinic and weekend clinic as part of the operations of the out-patient services of the Hospital. Said clinics to be operated for screening purposes seven (7) days during the week from 4:00 P.M. to midnight during each such day, and to provide patient care in said clinics on week days, to wit: from Monday through Friday from 4:00 P.M. to 10:00 P.M., and on Saturdays from 8:00 A.M. to 4:00 P.M.
- psychiatric social service, and the operation of the ambulance service, maintenance and operation of home care vehicles and the provision of visiting nurse and home-maker services are excluded from the services to be provided under the terms of this agreement by the Affiliate. However, the Affiliate shall exercise supervision over the operation of the home care vehicles.
- 2. The Commissioner of his duly designated representative at the Hospital shall have the 1 th to inspect all of the services rendered by the Affiliate and its employees, as well as all records pertaining thereto, in order to determine whether the services so provided comply with the terms of this agreement.

3. STANDARD OF AFFILIATE'S SERVICES

The Affiliate agrees to render all services for which it is responsible in a competent manner and to the best of its ability. The following standards shall be observed:

(a) General Standards:

The medical and dental services provided shall comply with all regulations applicable to these services as promulgated and enforced by agencies of the City of New York and the State of New York, and shall conform to the standards required by the State of New York and the City of New York for implementation of Title XIX of Public Law 89-97, and shall be consistent with the accreditation standards of the Joint Commission on Accreditation of Hospitals and the Council on Medical Education of American Medical Association.

(b) Clinic Care, Emergency Care and Home Care (Ambulatory Care):

The Affiliate shall appoint with the approval of the Commissioner, a full-time professional director of ambulatory patient services at the Hospital who shall be in charge of the out-patient services. Ambulatory care programs shall be patient-centered to promote maximum convenience and accessibility of high quality professional care to the patients served.

When possible, the Affiliate shall operate regularly scheduled out-patient clinics on weekday evenings and Saturdays. All clinics shall be operated on regular sheedules, and patients shall be seen by personal appointment whenever possible. Such appointment system shall be designed to promote continuity of patient care with specific physicians.

Professional direction and supervision of the emervency, home care and clinic services shall be provided 230a hysicians duly licensed

in the State of New York and board certified or qualified in internal medicine, general surgery, pediatrics or other appropriate specialties.

Physicians rendering services under these programs shall have completed an approved residency program and be duly licensed in the State of New York except that physicians who are enrolled in approved residency training programs at the Affiliate's hospital may render the services required herein provided they perform their duties under the direct supervision of a duly qualified and licensed physician. Ambulatory patient care programs shall be administered in accordance with standards promulgated by the Department and the Health Services Administration.

(c) In-Patient Care:

Professional direction and supervision of in-patient services shall be provided by full-time directors, certified in their respective specialties. The services so staff shall include, but not be limited to, medicine, surgery, obstetrics-gynecology, pediatrics, anesthesiology, radiology and pathology. All physicians engaged in provision of care to in-patients shall have completed an approved residency program and be duly qualified and licensed in the State of New York, except that physicians who are enrolled in approved internship or residency training programs at the Hospital or at the Affiliate's hospital may render the services required herein, provided that they perform their duties under the direct supervision of a duly qualified and licensed physician.

(d) Dental Care:

Dental services shall be provided by dentists duly qualified and licensed in the State of New York, or by dental residents and interns under supervision in an approved training program.

It shall be an early goal of the Affiliate to reach an optimum level of occupancy in the in-patient services of ninety (90) percent. This goal shall be attained without exceeding average length of stay norms for disease specific admissions.

(i) Exceptions:

Exceptions to the requirements contained in paragraphs
herein may be made by the Commissioner upon the request of the Affiliate,
consistent with the laws of the State of New York.

4: DUTLES AND RESPONSIBILITIES OF DIRECTORS OF SERVICES

Prior to the effective date of this agreement, the Affiliate
shall provide to the Commissioner a prepared description of the
duties and responsibilities at the Hospital of each director of medicine,
obstetrics and gynecology, pathology, pediatrics, anesthesiology,
physical medicine, radiology, surgery and out-patient services at the
Hospital, and such job description shall be appended to and made part
of this agreement.

director for each of the services covered under this agreement shall be named and appointed with the approval of the Commissioner.

Exceptions to this requirement shall only be permitted after written consent of the Commissioner.

appointee shall be designated and his name provided to the Commissioner.

In such cases, when no permanent appointment has been made, the Commissioner shall be notified at six (6) month intervals of the reasons for failure to appoint and of efforts that have been made to appoint.

INTERNS AND RESIDENTS

The Affiliate shall have the authority and responsibility under the general supervision of the Commissioner of Hospitals for recruiting, designating, assigning, reassigning and supervising all interns and residents and such physicians as may be employed, as provided in Paragraph "7", to perform intern and resident functions. This shall include the right to assign interns and residents interchangeably between the Affiliate's hospital and the Hospital to the extent deemed appropriate by the Affiliate. However, any intern or resident who is on the City payroll on the effective date of this agreement shall be permitted to continue at his option to be employed by the City, subject, however, to assignment and supervision by the Affiliate, and the Affiliate shall permit any intern or resident who is on the City payroll on the effective date of this agreement a free choice, without coercion or discrimination, to remain on the City payroll if he so desires. The Department of Hospitals shall retain and have available in the City payroll for the life of this agreement all existing intern and resident lines at the Hospital on the effective date of this agreement for purposes of employing interns and residents on said City payroll lines, if future accepted applicants for internship or residency positions elect to be paid from the City payroll, subject to assignment and supervision by the Affiliate. Such election shall be with freedom of choice and without coercion or discrimination.

The salaries and fringe benefits and living-out allowance of its interns and residents on duty at the Hospital shall be paid by the Affiliate from the compensation received from the City pursuant to this agreement; the City shall continue to supply to those interns and residents at the Hospital those perquisites normally provided for house staff within the municipal hospital system of the City. The Affiliate shall provide the duly designated representative of the Commissioner of Hospitals at the Hospital a listing of monthly assignments of interns and residents at the Hospital. The City shall pay the Affiliate only for the services of interns and residents actually performed in the Hospital. However, the City shall pay the salaries of those residents who are assigned with the permission of the Commissioner of Hospitals to hospitals which provide specialty training programs needed for approved residency training, provided such specialty training is not available at the Hospital.

6. COMPLIANCE WITH RULES AND REGULATIONS

The Affiliate and any person employed by the Affiliate to render services at the Hospital shall comply with e rules and regulations of the Department of Hospitals and the Hospital. In the event that any personnel employed by the Affiliate fails to abide by such rules and regulations, the Commissioner is authorized to direct in writing that the Affiliate terminate the services of such personnel at the Hospital, and upon such direction, the Affiliate shall forthwith terminate the services of such personnel at the Hospital. The Commissioner is also authorized to direct in writing the termination of the employment at the Hospital of any person employed by the Affiliate whose employment is deemed by the Commissioner to be not in the best interests of the City, and upon such direction the Affiliate shall forthwith terminate the services of such person at the Hospital.

Consistent with the provisions of the New York City Charter, the establishment of medical colicies and procedures, the organization and operation of the medical staff and organization and operation of the internship and residency training programs at the Hospital shall be the responsibility of the Affiliate subject to the general supervision of the Commissioner, whose decision shall be final and binding. Such medical staff shall be appointed in his discretion by the Commissioner on nomination by the Affiliate.

Except as provided in Paragraph "6" hereof (COMPLIANCE WITH RULES AND REGULATIONS) the Affiliate shall have the right to provide, supervise and discharge the personnel designated below, assigning and reassigning them to appropriate duties: such full-time or part-time directors of services and such additional full-time and part-time physicians and dentists, interns and residents as are required for the provision of proper medical care and house staff education throughout the in-patient and out-patient services of the Hospital and such professional, technical and ancillary personnel as are required for the provision of services required by the terms of this agreement. However, the numbers of ancillary employees of the classifications (or performing the same or similar functions under any other title or titles) indicated in Appendix A attached hereto and made a part hereof may not be increased beyond the number employed on February 10, 1967, except, if authorized by the Commissioner to assure adequate patient care, additional individuals

T

of

may be employed for a maximum of six (6) months. Such additional ancillary employees, if eligible, shall be transferred to the payroll of the City. In addition, thereto, the number of professional registered nurses provided by the Affiliate shall not be increased beyond the number employed at the Hospital on January 1, 1969. The Commissioner however, may, in order to assure adequate patient care permit the employment of additional professional registered nurses.

TIMEKEEPING

All session and part-time medical staff and all non-medical employees of the Affiliate shall indicate their time of arrival and time of departure by signing and signing out upon arrival and departure from the Hospital. Such time records hall bear the counter-signature of the director or supervisor of the department, division or unit. However, directors or supervisors of departments, divisions or notes and full-time medical personnel shall be permitted as an alternative to submit to the representative of the Affiliate a certification at the end of each pay period a forms approved by the Commissioner, such certification shall contain the time expended during that period in his assigned duties. All timekeeping records referred therein shall be kept on the premises of the Hospital. All records of timekeeping and certifications shall be retained for a period of six (6) years. The duly designated appresentative of the Commissioner shall be notified in advance of any planned expresentative of the Commissioner shall be notified in advance of any planned expresentative of more than one day and the reasons therefor of all directors or supervisors departments, divisions or units and full-time physicians.

9. FEES

No physician at the Mosmitel shall charge a fee for services rendered to any patient at the Hospital for his services. except as provided by law and the rules and regulations of the Department of Hospitals. As a condition of employment the Affiliate shall obtain from each physician an assignment on a form prescribed by the Commissioner of Hospitals of all fees for services rendered to petients in the Hospital who are entitled to medical services pursuant to Titles XVIII and XIX of Public law 89-97 and any amendments thereto, as well as Article 5, Title 11 of the Social Service Law and any amendments thereto, and liability and other assignable fees. In addition, each such physician shall be required by the Affiliate to execute all necessary instruments so that the City may obtain reimbursement pursuent to the aforementioned provisions. Failure to execute the required assignments for such fees shall be grounds for the City to offset such amounts collected against any sums due the Affiliate under this agreement.

10. GIFTS AND GRANTS

The Affiliate may receive and accept grants, gifts, bequests, devises and contributions from any source, including the City, for the support of the professional research and scientific activities to be carried out at the Hospital by, or under the direction of, personnel employed by the Affiliate. The Affiliate may retain for its exclusive use all such sums without being required to account for them as provided for the sums mentioned in Paragraph "14". However, the acceptance and administration of all such grants, etc., shall be subject to the rules and regulations promulgated by the Commissioner in connection therewith. The Affiliate shall furnish to the Commissioner information regarding the source of all gifts and grants, the amount and terms thereof, and, in addition, such other and such further information as he shall request relating to the research being performed by the Affiliate in the Hospital. Nothing herein shall exempt the Affiliate or its employees from any of the rules and regulations of the Department of Hospitals which specify the conditions under which research may be conducted in municipal hospitals.

11. TRANSFER OF PATIENTS TO AFFILIATE'S HOSPITAL

Any diagnostic and therapeutic procedures deemed necessary for patients admitted to the Hospital may, when suitable services and facilities are not available at the Hospital, be performed at the Affiliate's hospital. All transfers of patients shall be in accordance with the rules and regulations of the Department of Hospitals.

12. EQUIPMENT AND STRUCTURAL CHANGES

- (a) The University shall be permitted during each year of this
 agreement commencing July 1, 1969 to rent space at 383 Concord Avenue,
 in the Borough of the Bronx, City and State of New York in connection with
 the operation of all clinic services, at a rental not to exceed SIXTEEN THOUSAND
 (\$16,000) DOLLARS per annum; all rental agreements in connection therewith
 are first to be submitted to the City through the Department of Hospitals for approval.
- and without substitution therefor, the equipment set forth in "Schedule A" of
 Appendix B" attached to this agreement and made a part thereof. The City
 shall also, at its own expense, purchase by public letting, when required, the
 equipment set forth on "Schedule B" of Appendix B" attached to this agreement
 and de a part hereof. The equipment referred to in this sublivision (b)
 shall be purchased by the City on the requisitions of the Affiliate.
- (c) The Commissioner will recommend to appropriate authorities the inclusion in the City's Capital Budget of sufficient funds for initiation, development and execution of plans, specifications, alterations, renovations, and equipment related thereto at the Hospital, based in principal on the recommendations contained in "Schedule C" of "Appendix B" attached hereto and made a part hereof.

13. OFFICE SPACE AND FURNITURE

The City, at its own expense, shall provide office space and furniture, excluding office equipment, for such business administration personnel as the Affiliate will employ for the purpose of fulfilling its obligations under this agreement.

14. PAYMENT TO BE MADE TO AFFILIATE

The City shall pay to the Affiliate for the services provided by .

it hereunder, for the period from July 1, 1969 through June 30, 1972

as follows: .

- (a) For the period from July 1, 1969 through June 30, 1970,

 the sum of EIGHT MILLION FIVE HUNDRED SEVEN THOUSAND

 SEVEN HUNDRED THIRTY EIGHT (\$8,507,738) DOLLARS payable

 in the sum of ONE MILLION FOUR HUNDRED SEVENTEEN THOUSAND

 NINE HUNDRED FIFTY EIGHT (\$1,417,958) DOLLARS on July 1, 1969,

 and the sum of SEVEN HUNDRED EIGHT THOUSAND NINE HUNDRED

 SEVENTY EIGHT (\$ 708, 978) DOLLARS on the first days of the next

 ten (10) months there fter.
- the sum of NINE MILLION ONE HUNDRED FORTY FIVE THOUSAND

 EIGHT HUNDRED EIGHTEEN (\$9,145,818) DOLLARS payable in the

 sum of ONE MILLION FIVE HUNDRED TWENTY FOUR THOUSAND

 THREE HUNDRED EIGHT (\$1,524,308) DOLLARS on July 1, 1970,

 and the sum of SEVEN HUNDRED SIXTY TWO THOUSAND ONE HUNDRED

 FIFTY ONE (\$762,151) DOLLARS on the first days of the next ten

 (10) months thereafter.

the sum of NINE MILLION EIGHT HUNDRED THIRTY ONE THOUSAND SEVEN HUNDRED FIFTY FOUR (\$ 9.831, 754) DOLLARS payable in the sum of ONE MILLION SIX HUNDRED THIRTY EIGHT THOUSAND SIX HUNDRED TWENTY FOUR (\$ 1,638,624) DOLLARS on July 1,1971, and the sum of EIGHT HUNDRED NINETEEN THOUSAND THREE HUNDRED THIRTEEN (\$ 819,313) DOLLARS on the first days of the next ten (10) months thereafter.

Any monies earned as a result of interest-bearing deposits of funds provided pursuant to this agreement shall be credited as additional revenue and expended in accordance with this agreement or returned to the City, if unexpended.

15. EXPENDITURE OF COMPENSATION PAID TO THE AFFILIATE

The Affiliate will expend the compensation provided herein (with exception of the overhead allowance provided in this agreement) to provide the employees and the services required hereunder, excluding those business administration expenses specified in Paragraph "19" herein, and pay other expenses in connection therewith, including, but not limited to: the salaries (including pensions and other fringe benefits) of all persons who become employees pursuant hereto; unemployment insurance premiums, if required by law, F.I.C.A. taxex, New York State disability insurance premiums, and workmen's compensation premiums of such employees; the purchase of books, periodicals and journals, in an amount not exceeding \$15,000 in each agreement year; the expense of travel to home care patients and any emergency or essential and necessary purchase of supplies, drugs, services, structural repairs or alterations or equipment. In no event shall the Affiliate accrue and fund reserve accounts for purposes of vacation accrual liabilities. Effective January 1, 1969 the Affiliate shall transmit to the City all funds allocated and retained by the Affiliate for vacation accruals and overhead charge thereon for the periods prior to July 1, 1967 and for the period July 1, 1967 through June 30, 1968. Emergency purchase of supplies, drugs, services or equipment shall be made only with the written approval of the Commissioner or his duly designated representative on duty at the Hospital. However, the Affiliate shall maintain records adequately documenting all purchases, including the appropriate authorizations given prior to the making of the actual purchase.

Essential and necessary purchases may be made after obtaining from the Commissioner, or his duly designated representative, authorization certifying the necessity for the purchase of supplies, materials, services and equipment and the Affiliate may proceed to on order, awarded to the lowest responsible bidder, upon bids submitted without public advertisement, those supplies, materials, services and equipment needed. However, no single such purchase of supplies, services, materials or equipment shall be made where the cost thereof is in excess of \$2500 and further any structural repairs or alterations whether emergency, essential or necessary shall be made only with the prior written approval of the Commissioner and only when necessary for patient care. In addition, the Affiliate shall maintain records adequately documenting all such purchases, including the appropriate authorization given prior to the making of such purchase, as well as a record of bids received from at least three yendors.

The City will continue to supply blood for the Hospital's blood bank without charge. It is understood that no blood from the Hospital's blood bank will be used at the Affiliate's hospital, but nothing herein contained shall prevent the Affiliate and the Hospital from exchanging different types of blood as their needs may require.

PLAINTIFF'S EXHIBIT 29

The Affiliate is authorized to obtain for patients at the Hospital those diagnostic and therapeutic procedures not available at the Hospital which must be performed at commercial laboratories or at other hospitals at the rates charged to the Affiliate. When such diagnostic and therapeutic procedures are performed at the Affiliate's hospital they shall be provided at cost. An amount not to exceed \$20,000 of contractural funds in each agreement year of this agreement may be used for such purpose. When such procedures are obtained by the Affiliate at the Hospital for its own patients they shall likewise be provided at cost.

16. CONDITIONS FOR EXPENDITURES

The salary ranges, fringe benefits and perquisites paid to
the employees who are employed by the Affiliate to provide services
required by this agreement shall be consistent with those paid from
its own operating income to personnel performing the same or similar
functions at the Affiliate's hospital or those paid by the City, except
that differences in work load and working condition, shall be taken
into consideration.

An employee of the Affiliate shall be paid from the compensation received under the terms of this agreement only for work performed on the premises of the Hospital, or for work performed in home care programs or in satellite units of the Hospital, except by consent of the Commissioner or his duly designated representative. When an employee, as part of his obligations to be performed at the Hospital, under the terms of his employment by the Affiliate, is assigned duties in meeting faculty, teaching and professional commitments at the Affiliate's hospital or a medical school or a teaching hospital, it shall be with the knowledge of the Commissioner. Participations in scientific and educational programs are understood to be normal and accepted activities to be paid from compensation received under the terms of this agreement, but the limit of support for such activities shall be no greater than the benefits a similarly employed individual would receive at Affiliate's own institution. However, reimbursement for expense of travel for participation in such activities shall be limited to the continental United States of America, . Canada, Mexico and Puerto Rico.

All property purchased by the Affiliate with funds provided by the City for that purpose shall be delivered to the duly designated representative of the Commissioner at the Hospital.

17. INCREASE IN FIXED COSTS

The said compensation to be paid to the Affiliate shail be the sole sum paid by the City to the Affiliate under this agreement. In the event of an enactment by any public body of a rule, regulation or statute which increases the cost of performing the services rendered pursuant to this agreement by the Affiliate, or in the event of such increase in cost due to collective bargaining or general wage increases, the parties hereto agree to re-negotiate this agreement to provide fair compensation for such increased cost, subject to the approval of the Board of Estimate.

PLAINTIFF'S EXHIBIT 29

18.1 OVERHEAD PAYMENT TO THE AFFILIAL

The Affiliate shall receive for overhead costs, computed on the cumulative amounts expended by it in each contract year in this agreement and all other agreements, present and future (unless specifically excluded), between the parties for professional and related services at any municipal hospital, the following:

- DOLLARS expended by it, and
 - (52,000,000) DOLLARS expended by it, and
 - (c) Five percent (5%) on the balance expended by it.
 - (d) In determining the overhead earned:
 - L. the salaries and fringe benefits of interns and residents shall be excluded from such determinations;
 - zegistered nurses shall be excluded from such determination but the Affiliate shall receive as overhead 5% of the salaries, fringe benefits and recruitment expenses of the aforementioned nursing
 personnel.

The total overhead allowance paid to the Affiliate pursuant to this agreement shall not exceed the total amount as computed in this Paragraph "18".

The total compensation paid to the Affiliate pursuant to said agreements,
including overhead allowance, shall not esceed the total payments specified
in the payment provisions in said agreement.

19. EXPENDITURES TO BE CHARGED TO OVERHEAD

The following expenses must be paid by the Affiliate from overhead allowance paid pursuant to this agreement: the expenses incurred in the business administration of this agreement, including but not limited to, salaries and fringe benefits of employees assigned to the purchasing, accounting and personnel departments, and such employees who supervise -those departments; all other expenses related to the maintenance and auditing of all fiscal accounts; all other expenses related to the purchasing by the Affiliate of supplies, drugs, services and equipment of any kind permitted in this agreement; the salaries and fringe benefits of chauffeurs and all transportation expenses between the Hospital and the Affiliate's hospital in addition to those incurred in the business administration of this agreement (except those transportation services which the City is required to provide pursuant to this agreement); and all other expenses including legal expenses, office supplies and office equipment used in connection with the business administration of this agreement.

23. AUDIT TO BE FURNISHED TO THE CITY

. Within one hundred twenty (120) days after the close of each agreement year, the Affiliate shall furnish an audit report of its fiscal operations under this agreement and a statement of the funds unexpended and uncommitted from the monies received during the preceding contract year. These unexpende committed funds shall simultaneously be repaid to the City without retaining overhead thereon. Such audit shall be certified by independent certified public accountants or a New York State licensed public accountant appointed by the Affiliate and who shall be paid by it out of the funds received by it for overhead costs hereunder. The Affiliate, in retaining such accountants, must provide in the retainer agreement that such accountants, in performing said audit, must attach thereto a certificate indicating that they have examined this affiliation agreement. Said accountants shall also certify that they have examined the books of account and statistical records and in their opinion all expenditures have been made in accordance with the provisions of this agreement. In addition thereto said retainer agreement must provide that such accountants are obligated to furnish the Commissioner and the Comptroller of the City of New York, at their request, copies of any and all supporting data for any of the schedules of the accompanying statements.

Information in the audit report shall include:

described in Paragraph "21" (Books of Account) and divided into

physicians and other personnel, other direct expense and deductions
for City paid personnel.

- 2. Additional schedules shall be furnished to provide for the accounting of services, supplies and equipment specifically limited by the terms of this agreement.
- 3. Overhead shall be set forth in a statement describing the expenditures from which overhead was derived and the method for computing overhead earned.

PLAINTIFF'S EXHIBIT 29

ZI. BOOKS AND ACCOUNT

by this agreement shall be kept separate from those of the Affiliate's hospital. Affiliation expenses should be recorded on the books of account in empense account classifications which generally correspond in format to the American Hospital Association's recommended Chart of Accounts (most recent editions), numbers 600 through 999, in such manner as to provide total costs for each of the various cost centers of the Hospital.

The salaries and fees charged to each account (cost center or department) shall, when applicable, be separated into physicians, other personnel and other expenses. Fringe benefit costs shall be allocated to each account (cost denter and department) and shall be further delineated through cost allocations as to physicians and other personnel. The Affiliate shall also be required to maintain supporting records providing cost allocations for physician expenses as to amounts, including fringe benefits, assignable to 'services to patients' and 'administration, teaching and research' in accordance with Title XVIII,

Parts A and B of Public Law 89-97. Supplies and other direct expenses shall, when appropriate, be allocated to each account (cost center or department) in accordance with the recommendations of the American Hospital Association.

22. INFORMATION TO BE FURNISHED TO THE CITY

The Affiliate will furnish for the purpose of audit and cost. atements, at such times as the Commissioner or the Comptroller of the City of New York may request, and in such manner as they may prescribe, any and all information concerning its fiscal operations and statistical operations carried out under this agreement, and the booksand records of the Affiliate for its operations under this agreement shall be readily available for examination at all reasonable times. The Commissioner, the Comptroller of the City of New York and their duly designated representatives shall have the right at all times to inspect the services being performed by the Affiliate at the Hospital. The Commissioner or his duly designated representative shall be provided quarterly with an up-to-date personnel roster of employees of the Affiliate, their assignments, their weekly hours of work, whether any time was spent in teaching and meeting faculty-requirements as specified in Paragraph "16" (CONDITIONS FOR EXPENDITURES), and their rates of pay. - Notices of any accession and termination of employees of the Affiliate shall be routinely forwarded to the duly designated representative of the Commissioner.

23. PAYMENT TO CIVIL SERVICE EMPLOYEES

the Affiliate pursuant to this agreement have previously been performed by civil service employees of the City, the Affiliate may offer such persons the opportunity to be transferred to the payroll of the Affiliate, in which event upon such transfer they shall be paid out of the compensation received by the Affiliate pursuant to this agreement; those persons who prefer to retain the civil service status, including interns and residents, shall be entitled to do so, in which event the City shall deduct from such monthly payments to the Affiliate pursuant to the terms of this agreement a sum equal to the salaries and Affiliate's equivalent fringe benefits of such employees plus the applicable overhead allowance thereon, except that no overhead shall be allowed on salaries of interns and residents.

The Affiliate agrees that it will not request the transfer of any civil-service employee now employed at the Hospital to a position in a different municipal hospital for a period of six (6) months from the date of the execution of this agreement. In the event of a request by the Affiliate for such transfer after six (6) months, the Commissioner shall have the sole power of effectuating such transfer. Nothing in the foregoing shall prevent the voluntary transfer of a civil service employee to the payroll of the Affiliate.

Civil service employees on the payroll of the Hospital may, with the written consent and approval of the Commissioner, be assigned by the Affiliate for such periods as may be necessary for in-service training during which period, however, such employees shall continue to be on the City payroll. If, after such retraining, an employee shall not be satisfactory to the Affiliate, the Affiliate may then request the transfer of such civil service employee out of

the Hospital. The Commissioner or his duly designated representative shall have the sole power of effectuating such transfers.

In the event that a vacancy occurs in 2 position at the entrance (first) level held at the Hospital by a civil service employee as herein provided, such vacancy shall be filled from the appropriate existing civil service list, or one promulgated within sixty (50) days from the date of the vacancy, for such position.

In the event that a vacancy occurs in such a position above the entrance (first) level held at the Hospital by a civil service employee, such vacancy shall be filled from the appropriate existing civil service promotion list, or one promulgated within six (6) months from the date of the vacancy for such position.

If a vacancy exists as herein provided and no appropriate civil service list is in existence, the City may appoint provisionally a qualified civil service employee after consultation with the Affiliate to fill such vacancy subject to the promulgation of an appropriate civil service list, as herein-before provided. However, there shall be no diminution in the numbers of city civil service lines listed in Appendix "C" by reason of this agreement including promotional positions, in the contract areas as of June 1, 1967.

The Affiliate shall provide full and equal opportunity to city personnel working in the contract areas. This shall apply to use of facilities, equipment, and to the opportunity to advance professionally.

24. SUPPLEMENT TO SALARIES OF CIVIL SERVICE EMPLOYEES

No part of the funds received by the Affiliate pursuant to this agreement shall be used to supplement the salaries of civil service employees who are paid by the City for performance of regularly prescribed duties. In addition, the Affiliate shall not supplement the salaries of civil service employees who provide a service which the Affiliate is required to perform or provide pursuant to this agreement from any source of funds, including research grants and private funds.

25. ADDITIONAL EMPLOYMENT

Civil Service employees shall be permitted to accept additional employment from the Affiliate at the Hospital, for such services as the Affiliate is required to perform pursuant to this agreement, and be paid from funds provided pursuant to this agreement. Such additional employment of civil service personnel shall only be permitted when there is no conflict with regularly prescribed duties and assigned work schedules of the employees and the time records are clearly noted that such employment was in addition to the prescribed work hours for City pay. However, such additional employment shall only be permitted with the consent in writing of the Commissioner, after written application describing the circumstances which make such additional employment desirable. Personnel of the rank of Assistant Hospital Administrator and higher having responsibility for administering this agreement shall not be paid by or on behalf of the Affiliate for services rendered to the Affiliate from any source of funds whatever.

26. INSURANCE

The Affiliate shall procure and maintain during the life of this agreement, with respect to those persons who become its employees hereunder, workmen's compensation insurance and disability benefits insurance in accordance with the laws of the State of New York. Two certificates of such insurance shall be furnished to the Commissioner.

27. INDEMNITY BY THE CITY

- (a) Until this agreement and any renewal thereof shall be terminated, the City shall keep, save and hold harmless the Affiliate and its physicians and dentists from any and all liability, loss or damage:
- and dentists in connection with this agreement except that the foregoing shall not apply or inure to the benefit of any physician or dentist who shall charge a fee for his service whether or not payment is made therefor directly to him. However, a physician or dentist who at the direction of the Commissioner executes an assignment for the benefit of the City shall not be deemed to charge a fee for his services hereunder.
- (2) resulting from or by reason of any defect or condition of the premises, building and equipment owned by the City.
 - (b) The foregoing is conditioned upon each of the following:
- (1) The Affiliate and each of its physicians and dentists shall promptly forward to the City all summonses or notices of whatever nature respecting these claims received or served upon them or each of them.
- (2) The Affiliate and each of its physicians and dentists shall cooperate fully in aiding the City to investigate, adjust, settle or defent each claim, action or proceeding.
- (3) The defense of all claims, actions and proceedings within the purview of this paragraph shall be handled by the City. The Corporation Counsel of the City shall appear and defend such actions and proceedings on behalf of the Affiliate and its physicians and dentists. No settlement shall

27. (Cont'd.)

be made without the approval of the City. In the event of any appeal from a judgment against the Affiliate or any such physician or dentist, the City will promptly either satisfy such judgment or procure a stay of execution by filing.

-at its own expense, the appropriate bonds or other instrument so that execution shall not issue against the property of the Affiliate or such physician or dentist.

- (c) The City's liability hereunder shall continue after termination of this agreement with respect to any liability, loss or damage which occurred prior to such termination.
- (d) It is understood that the City is not obligated to save harmless or indemnify the Affiliate or its physicians and dentists as a result of any act committed by it or them, tortious or otherwise, other than an act of malpractice.
- (e) Malpractice and comprehensive or general liability insurance shall not be purchased with City funds.

28. EFFECTIVE DATE

This agreement, when signed by the Commissioner, after approval by the Board of Estimate, and the authorized representative of the Affiliate shall become effective on July 1, 1969 and continue for a period of three (3) years thereafter unless terminated prior thereto as provided in Paragraph "30" of this agreement.

PLAINTIFF'S EXHIBIT 29

29. RENEWAL .

The parties agree that the City and the Affiliate will review the desirability of renewing or re-negotiating this agreement on or before

September 1, 1971, and will decide on or before that date whether it shall be re-negotiated for renewal and the terms thereof for such extended period, unless sooner terminated as provided in Paragraph 130" herein. Such action shall be subject to the approval of the Board of Estimate.

-3p. TERMINATION

Either party to this agreement shall have the right to terminate this agreement, provided that notice in writing is given to the other at least six (6) months prior to the effective date of the proposed termination and provided that this agreement shall have been in effect for nine (9) months prior to written notice of termination.

PLAINTIFF'S EXHIBIT 29

OBLIGATION UPON TERMINATION

Upon termination of this agreement:

- (a) The Affiliate shall receive compensation in accordance with this agreement for such services as shall have been performed up to the date of termination.
- (b) The liability of the City for payments to the Affiliate and the liability of the Affiliate for services hereunder, shall cease.
- account for and refund to the City, as of the date of termination, all unexpended and uncommitted compensation paid in accordance with this agreement and any earned interest thereon; but in no event shall the City be liable for any employment contract.
- (d) The City shall, in the event of termination of the agreement, be obligated to reimburse the Affiliate a sum equal to the Affiliate's total liability for vacation earned but not used by any of its employees, including fringe benefits and overhead chargeable thereto.

The City shall not be obligated for any liability in excess of 40 days for each employee of the Affiliate of such earned but not used vacation for any employees.

(e) The Affiliate shall turn over to the City and account for all equip=
ment, appurtenances and property and shall be liable for any equipment
over which the Affiliate or its employees has been given jurisdiction.

(f) The Affiliate shall make available to the City for examination all patient and fiscal records concerning the operation carried out under this agreement and shall make available to the City copies of the same upon request.

32. ASSIGNMENT

This ag reement shall not be assigned, sublet, or transferred without the written consent of the Commissioner and the approval of the Board of Estimate.

33. APPROVAL BY MUNICIPAL AUTHORITIES

- (a) This contract shall be binding only to the extent that there be sufficient funds appropriated therefor.
- (b) This agreement shall not become effective or binding upon the CITY unless and until the same shall have been approved by he Board of Estimate of the City of New York and the Comptroller of the CITY shall have endorsed hereon his certificate of appropriation of funds applicable to this agreement.

34. COMPLIANCE WITH GENERAL MUNICIPAL LAW SECTION 103 a and b

The contractor hereby agrees to the provisions of Section 103 a and 103 b of the New York General Municipal Law which requires that upon the refusal of a person, when called before a grand jury, head of a city department, or other city agency, which is empowered to compet the attendance of witnesses and examine them under oath, to testify in an investigation concerning any transaction or contract had with the State, any political subdivision thereof, a public authority or with any public department, agency or official of the State or of any political subdivision thereof or of a public authority, to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant question concerning such transaction or contract, (a) such person, or officer shall be disqualified from thereafter selling to or submitting bids to or receiving awards from or entering into any contract with the City of New York or any public department, agency or official thereof, for goods, work or services, for a period of five years after such refusal, and (o) any and all contracts made with the City of New York or any public department, agency or official thereof since the effective date of this law, by such person, and by any firm, partnership, or corporation of which he is a member, partner, director or officer may be cancelled or terminated by the City of New York without incurring any penalty or damages on account of such cancellation or termination, but any monies owing by the City of New York for goods delivered or work done prior to the cancellation or termination shall be paid.

IN WITNESS WHEREOF, The City of New York has caused these presents to be executed in quadruplicate by the Commissioner of Hospitals, and YESHIVA UNIVERSITY caused these presents to be so executed by its duly authorized officer and its corporate seal to be hereunto affixed, the day and year first above written.

THE CITY OF NEW YORK

By Commissioner of Hospitals

APPROVED AS TO FORM:

Moro M. Lipto

ACTING CORTOR ATION COUNSEL

YESHIVA UNIVERSITY.

JUH 2 4 1369.

FRESIDENT

STATE OF NEW YORK)

On this g day of August. 1969 before me personally came Laking a Linguist, to me known and known to me laking to be the Commissioner of Hospitals of The City of New York, the person described in and who, as such Commissioner, executed the same in behalf of The City of New York and the Department of Hospitals for the purposes therein mentioned.

Notary Public

COUNTY OF NEW YORK)

On this 69 day of AUGUST, 1969

, before me

personally came SAMUEL BELIXIN.

to me known, who

being duly sworn, did depose and say that he is the MESIDENT

of YESHIVA UNIVERSITY

the corporation described in

and which executed the foregoing agreement; that he knows the seal of said corporation; that the seal affixed to said agreement is such corporate seal; that it was so affixed by order of the Board of Trustees of said corporation, and that he signed his name thereto by like order.

Notary Bublic

Notary Public

NORMA STERN

No. 24-9183175

Qualified in Kings County

Commission Expires March 30, 1970

APPENDIX A

5177

EMPLOYEE TITLES

Nurse Aide) :		
Dietary Aide) and suc	ch Aide titles as have been recommended t	o be
Housekeeping Aide) created	d to the City Director of Personnel as a re	sult
Institutional Aide) of the r	recent Collective Bargaining Negotiations.	
Account Clerk		
Clerk		
Serior Clerk		
Stenographer		
Senior-Stenographer		•
Typist	· · · · · · · · · · · · · · · · · · ·	
Transcribing Typist		Z'.
Shorthand reporter		: · . ·
Telephone Operator	- manufacture of the state of t	
Senior Telephone Operator		
Alphabetic Key Punch Operator (II	(BM)	
Tabulator Operator (IBM)		
Senior Tabulator Operator (IBM)		
Office Appliance Operator		
Messenger (Rule XI)		
Supervising Clork		
Supervising Stenographer		•
Supervising Telephone Operator		
Supervising Tabulator Operator (I	IBM)	• •
Garage Foremen		
Laborer		
Motor Vehicle Operator		. •
Watchman		
Mortuary Caretaker		• •
Institutional Barber		

Senior Bacteriologist X Assistant Bacteriologist Bacteriologist Junior Bacteriologist Senior Chemist Chemist Chemist (Bio-Chemistry) Assistant Chemist Senior Chemist X Junior Chemist Supervisor II (Social Work) Supervisor I (Social Work) Social Worker Case Worker II Supervisint Medical Records Librarian Senior Medical Records Librarian Medical Records Librarian Senior Psychologist Psychologist Rehabilitation Counselor . Laboratory Aide Principal Mortuary Caretaker -Senior Mortuary Caretaker Mortuary Caretaker Senior Laundry Supervisor Laundry Supervisor Laundry Foreman 269a

OF RICHARD WEEKS BEFORE THE NEW YORK CITY COMMISSION ON HUMAN RIGHTS

422

Richard Wecks-for Complainant-Direct

RICHARD WEEKS, called as a witness in behalf of the Complainant, having been first duly sworn, testified as follows:

The Witness: My name is Richard Weeks. I live at 825 East 167th Street, Bronx.

Direct examination by Mr. Taylor:

- Q. What is your occupation? A. I am what they call senior assisant trainer for the psychiatric services, I think recently renamed the Lincoln Hospital Community Mental Health Service Program administered by Einstein College of Medicine.
- Q. You are on the payroll of Einstein Medical College?
- Q. Do you have any other function in the community other than that which you have just alluded to? A. I am a member of the Morrisania Community Corporation; Poverty Program Board of Directors; Chairman of a Civil Rights Association called African-American, Bronx Coalition.
- Q. You have been at Lincoln Hospital how long? A. Since 1965.
 - Q. That is about four years? A. Yes.
- Q. In that time, have you been able to observe the hiring of Black and Puerto Rican supervisory personnel? A.
- Q. In your observations, could you tell me how many Black and Puerto Rican supervisory personnel are there on the Einstein Medical College payroll as of now, if you can so state? A. I can only restrict my comments to the particular program I worked for, the mental health program.

Richard Weeks--for Complainant-Direct

Q. All right. Do that. A. I think it is around about twenty-three or twenty-four out of about one hundred thirty or something. I know it is a loose figure, and I don't have figures at this point. We compiled statistics relating to the March crisis of mental health services indicating that twenty per cent of the supervisory employees for that particular program was Black and Puerto Rican.

Q. What did you call it? The March— A. Job action demonstration that took place involving mental health services at Lincoln.

Q. When?

March of '68? A. '69. There was before, too. One in

Q. What was the subject matter or basis for that job action? A. The basis for that was a culmination of about three to four years of what the workers felt was serious and persistent malpractice and mistreatment in terms of personnel practices, job evaluation procedures, hiring and firing practices as implemented and administered by Einstein College and its director of the program; and also charges there was a racial discrimination in terms of the upgrading of Black and Puerto Rican workers and firing of Black and Puerto Rican workers and nature.

Q. In the opinion of those protesting those conditions, did they relate to racism and discrimination? A. Yes. We put it in two categories. We first charged institutional racism, indicating the double standard of the Blacks and Puerto Rican workers, mostly nonprofessionals were treated in an unfair way compared to the white workers, mostly professional, and when it came to the job evaluation, that they were evaluated unfairly, and for reasons

Richard Wecks-for Complainant-Direct

that were not consistent with the same way they evaluated the white professionals or workers who also worked for that agency.

Q. Were you a supervisor on the Einstein Medical-

A. Yes. A nonprofessional supervisor.

Q. Are you saying then that the conditions that obtained Einstein Medical College in March of 1968 with respect to the conditions you just testified to exist now? A. Yes.

I would say by and large they still exist.

Q. Is it your observation that there has been a failure on the part of the Einstein Medical College to upgrade and advance Puerto Rican and Black employees, supervisors and nonsupervisors? A. Definitely. There is a union contract in which Einstein agreed to upgrade the work based on seniority and performance. We feet that many workers, including myself, feel they are not complying with that, plus they are not upgrading the Black and Puerto Rican workers.

One of our specific charges in the March 1969 crisis dealt with some very specific instances of race discrimination. One was the appraching of Black and Puerto Rican workers of the community positions considered profes-

sional.

Black and Puerto Rican nonprofessionals were told—in fact it was the policy, I got the impression, that they had to have college degrees to qualify for community organizers. It came to pass that a white worker was hired who did not have a college degree as a community organizer and when the issue was brought out and put on the table, he was taken out of the line, but nevertheless he continued to be employed. The line was not freed, and there was no upgrading of Black and Puerto Rican workers and there was this demonstration of double standard.

Richard Weeks-for Complainant-Direct

Q. Would you know whether or not these employees about whom you have been testifying are all on the Albert Einstein payroll? A. Yes.

Q. Those who are union members were members of District Council 37? A. Members of 1199.

Q. If they are on the payroll of Einstein Medical College, would you know whether or not they come under the jurisdiction of Abraham Silverberg with respect to payroll, and that kind of thing? A. There is quite a bit of confusion as to Mr. Silverberg's role in terms of hiring and firing of workers.

It is my understanding, and I think experience to some degree bore it out, the hiring and firing responsibilities rested with the director at the Lincoln Hospital Mental 'Health Program, at that time Dr. Peck.'

There was supposed to be coordination with the liaison office Mr. Silverberg headed up, and he did not have hiring and firing responsibilities, but the obligation of making sure there was coordination in terms of the budget and so on, but the actual hiring rested in the hands, as far as I know, of Dr. Peck at that time.

Q. Of all the heads of departments at the Albert Einstein facility at Lincoln Hospital, do you know of any Black or Puerto Rican head of department other than Dr. Foster? A. Let me see. The mental health services—

Q. Was Dr. Peck the head of mental health? A. He was. He took a sabbatical.

Q. He was not black, was he? A. No.

Q. Were there any heads of departments? A. They had various units. They had a unit called development.

Q. Is that the monal health department? Or a sub-section? A. Sub-section.

Richard Wecks-for Complainant-Direct

Q. I am asking about heads of departments. Are there any Puerto Rican or Black heads of departments other than Dr. Foster that you know of on the Eistein payroll of the Lincoln Hospital facility? A. As I said, my knowledge of the other services is quite limited. In terms of the mental health service I can only comment with some degree of accuracy on that. I don't know with respect to social services and other aspects of the departments.

In terms of the mental health services, the man who directed the entire mental health services at that time was Dr. Peck. We have another director, Director Ruiz.

Under these over-all programs you had program units.

Q. I didn't ask you that.

Can you recall any other specific incident similar in nature, if not specifically the same, of an example of a double standard? You indicated one where you were advised that a community organizer had to have a college degree, but that apparently was waived with respect to a Caucasian community organizer.

Can you mention any other application of that kind of double standard! A. Many. Things that we charged in terms of discrimination involved the termination and dismissal of Black and Puerto Rican workers, and we also charged, with much basis for it, that no termination of white workers-I was involved myself in various cases of assisting Pureto Rican and Black workers who had been fired and also charged this did not happen to white

In the case of Manny Mathew, I was involved in that situation and when he was fired by Mr. Silverberg under the same circumstances where we felt there was no justification for it, and the community came in and complained, he reinstated Mr. Mathew, who we felt was the

Richard Wecks-for Complainant-Direct

only Puerto Rican in any professional capacity in the liaison department and one of the few we know of.

We demonstrated on his behalf and Mr. Silverberg then reinstated him with the condition he would be evaluated.

I was selected and agreed upon to be one of the people who would be involved in the evaluation of Mr. Manny Mathew.

They completely violated the conditions of that agreement, because after six months when he was reinstated he was supposed to be evaluated. He was supposed to call in the assistants who interpreted the evaluation.

They completely violated that. They called certain members of the committee together and refused to notify me.

We felt this was a situation where this would never happen to a white worker where he had been unjustly terminated and reinstated, and when the conditions of reinstatement agreed upon by all parties were blatantly violated.

Q. Are you familiar with Mrs. Carrion's case? A. Only to the extent that Mrs. Carrion, who asked me for some counseling in respect to what was happened to her, and to the extent which she acquainted me with the circumstances, that is the extent to which I am familiar with Mrs. Carrion's case.

Q. Do you have any knowledge at all of a person of Mrs. Carrion's professional standing being terminated by Albert Einstein without ever having afforded that person the opportunity of a hearing?

Do you have any knowledge of any white person ever fired under such circumstances! A. I personally have no knowledge of that happening to any white worker, and many of the white workers that I have had experience

Richard Weeks-for Complainant-Cross

with, when their incompetence was demonstrated, one way or another, they found other positions for them.

There have been questions about the competence of some white workers, but they found ways to transfer them into other jobs and maintain their livelihood. This never happened in terms of Black workers.

In terms of Mrs. Carrion, many of us in the community became distressed that a woman with over twenty years in the social service field and in a community that desperately needs such experience, that she should be so arbitrarily dismissed. We felt from the community standpoint, to deprive the services of this woman, not even to mention what we felt to be her basic rights—we found this very distressing.

Over the years we have had reason to suspect Einstein in terms of serving the community. On July 9th mental health made an investigation and substantiated all the charges in respect to the malpractices of the mental health program in Einstein.

I think over the years it continued in the way they treated employees, really putting in jeopardy their reputation as an institution of some credibility.

Mr. Taylor: Nothing further.

Cross-examination by Mr. Woicik:

- Q. You work for the Lincoln Hospital Mental Health Service? A. Lincoln Hospital Mental Health Program.
- Q. You said previously Dr. Peck had been the director?

 A. Right.
- Q. Who is the director now! A. The director is a Mr. Pedro Ruiz.

Odessa Carrion-for Complainant-Recalled-Redirect

Q. Mister? A. Dr. Perdo Ruiz.

Q. Is he Puerto Rican? A. He is a Cuban, from my understanding. He claims he is a Cuban refugee from the Castro administration.

Mr. Woicik: That is all. Mr. Taylor: All right. The last is Mrs. Carrion.

Commissioner Halpern: I want to remind you that you said he was the one who would be the

Mr. Taylor: No. This is the last.

Commissioner Halpern: Then it was five of four and you said, just another few minutes.

In my vocabulary over an hour is not "just a few minntes".

Commissioner Colgate: Mrs. Carrion has previously been sworn. I believe we will proceed.

ODESSA CARRION, previously sworn, was recalled and testified further as follows:

Redirect examination by Mr. Taylor:

Q. Mrs. Carrion, you have heard, I believe, the testimony that has been given in this hearing? A. Yes.

Q. Is it your contention that you have been discriminated against by Einstein Medical College by denying you the position of student unit supervisor? A. Yes.

Q. And by subsequently denying you an opportunity to be considered for another opening of the same type? A.

DEFENDANT'S EXHIBIT H -MEMORANDUM DATED OCTOBER 1, 1969

ALBERT EINSTEIN COLLEGE OF MEDICINE

MEMORANDUM

TO:	IFa Lubel	1, M.D.	12.5	11116	`~~	TE: Octob	er 1. 1969
FROM:	13,86	133	2.0	17/22.5 12 1/2	· 6	55.50	يرُ الله الله

We, the undersigned, would like to go on record regarding the accusations which we understand are cursently being made against Mr. Ray Cagan.

We are schocked and appalled by the content of the accusations and the manner in which they beare being used. To accuse any ne in his absence without providing him an opportunite defend himself is not only a violation of the code of ethics of our profession, but personally unacceptable to us.

We argently requesst that these proceedings be immediatel stopped until Mr. Cagan returns from his vacation.

Rendell Link en Eti Levy claving cier

Kandled to Dor. C. 10-1

c. P.C.

Paro E

non, 6/69- Respondents's

MEMORANDUM

MEMORANDUM

MEMORANDUM

MEMORANDUM

MEMORANDUM

MEMORANDUM

Br. Ira Labell Assistant Hospital Commissioner

DATE: October 3rd, 1969

cr. Our Meno of 10/1/69

We thought you would be interested in the enclosed copy of a statement which we are told is presently being prepared for circulation. Ifuch as we would like to consider the matter dropped as you said it was, apparently lies. Carrion has not accepted this. In view of the fact that this matter does not only affect it. Cogan adversaly but the Social Service Department as a whole, we feel that some action should be taken.

In addition lies Sanchez has requested that the Social Service Superdisory staff protect her from harasment by Mrs. Carrien who is trying to force beat to sign the attached statement.

Thank you.

cc: Mr. A. Silverberg
AMON Liason Administrator

Mr. Raymond Cayen, Director Department of Social Services Quette Windricks

Pay F-1

11/6/69 - Regardent to

279a

In the Spring of 1968, Mrs. Varques, a toosial service case aid informal me that the secretaries told her that Mr. Cagan had node sexually charged overtures to Miss Shirley Sanchez who was later transferred to the Home Care Department.

9/25/69 - I sent for Miss Sanchez and esked her about this. Miss Sanchez stated that one morning in the Spring of 1963 when she was alone in the office, Mr. Cagan approached her and remarked that she was probably having sex with boys, because she was old enough to. Miss Sanchez replied that she was shocked that he would approach her in this nanner. She continued that a few days later he encountered her again and stated, "Boy, wait until I get you in bed and made sounds with his mouth." Miss Sanchez replied, "You had better stop approaching me like this or I am going to report you."

The same day I took Miss Sanches into Dr. Lubell's office where she repeated this story. Dr. Lubell was sympathetic with Miss Sanches and stated that these were inappropriate responses for an administrator to make to an employee.

Mrs. Odessa Carrion OPD Social Work Supervisor

OC/ovh

pro fix

PETITION DATED OCTOBER 3, 1969 ALBERT EINSTEIN COLLEGE OF MEDICINE of YESHIVA UILIVERSITY MEMORANDUM Dr. Lubell, Assistant Commissioner DATE: 10/8/69 Mr. Silverberg, Liaison Administrator The Undersigned ECT: We, the undersigned members of the Social Service Denartment hereby request immediate dismissal of Mrs. Odessa . Carrion, Supervisor in the Social Service Department as we can no longer work with her. We request an immediate meeting with both of you to discuss the action to be taken on this request. This meeting must be held in the presence of a lawyer representing the Albert Einstein College of Medicine as Mr. Silverberg suggested. 281a

Man alport	
Glain Mays	
auchin (Die	acela
. 0:	
6-24 ***	

DEFENDANT'S EXHIBIT K INTER-DEPARTMENT MEMORANDUM DATED OCTOBER 21, 1969

W.Y.C. 14-800M-1202101(61)

THE CITY OF NEW YORK

Intradeportmental Memorandum

To: Mr. Abraham Silverberg

Date: October 21, 1969

From: Mr. Stanley Shulman

Subject: Orievance 98: Kathleen Cullen

Assistant Hospital Administrator

Present: Kathleen Cullen, Mrs. Manning (District Council 37), Mrs. Morales (Social Service)
Mr. Foster (District Council 37), Mr. Bronson (District Council 37)

A hearing was held this morning in the office of Mr. Abraham Silverberg relative to a grievance filed by Kathleen Cullen concerning harasement by Mrs. O. Carrion, supervisor of Nedical Social Service Out Patient Department and who is employed by AECOM affiliation.

The facts of the hearing revealed that Mrs. Carrion forceably pulled Miss Callen into an office in the presence of Mrs. Carrion's secretary, Miss Vasquez, demanded that Miss Callen sign a petition bearing allegations against the Director of Social Service which the grievant knew to be false. The grievant refused.

Approximately two (2) days later, Miss Cullen received a call from "ra. Carrion who threatened that if she in turn signed any petition against her that she would be instrumental in having her lose her job. The prievant further tastified to the fact that she heard Mrs. Carrion urgs a co-worker, Shirley Sanches, to sian a letter of complaint or petition against the Director of Service and that when "iss Sanches refused, Miss Carrion did say, "Are you with the Puerto Ricans and Blacks or for the Whites". For whatever merits may exist, Miss Cullen who is on very friendly terms with Miss Sanches, was told by this young lady that at no time and in no momen was anything said or done to warrant Miss Carrion making such allegations against the Director of the Service and that most assuredly nothing ever happened to her.

Miss Culler had reported this matter to Miss Carrie Miller in a memorandum dated October 9th. Furthermore, an additional memorandum from another employee, Miss Joan Sasson, verifies the charge of harassment by Mrs. Carrien. Mrs. Goodge Kartyold, a Social Worker, in a memorandum of October 20, 1969 verifies that Miss Sanchen was being harassed by Mrs. Carrien and urged to sign a document of gross destection.

With these facts before me, I find that several city employees have in fast been harassed and intimidated and asked to commit criminal liable by an employee of AECO' name, Mrs. Carrion. I further find that Mrs. Carrion had no direct supervision over the three (3) employees involved and indeed Miss Sanchez had not been working in Social Service for over a year and that whatever allegations where made hy this. Carrion, allegedly took place more than a year and a half ago. This fact itself vaises the suspicion that Mrs. Carrion is being motivated by purely personal animosity.

I think you will agree that we cannot permit only individual who have caused each destruction and such anxiety among our employees, after we have event years trained to promote a harmonious interrelationship to remain here. The facts ising what they are and although being without official power under the contract, I respectfully suggest that Mrs. Carrion is unfit to work here.

·SS/rr

Prop. B

283a Evid. - Digge lenk'EX.B.

MEMORANDUM DATED OCTOBER 22, 1969 ALBERT EINSTEIN COLLEGE OF MEDICINE of YESHIVA UNIVERSITY

MEMORANDUM

10: Mr. A. Silverberg, Liaison Administrator

DATE: 10/22/69

FROM: MSW's - Social Service

USJECT:

Mrs. Odessa Carrion

In view of Mrs. Carrion's history of reprehensible behavior both as an individual and as a professional as indicated in our recent communications (see memorandums of 10/1, 10/3 and 10/8/69), we, the undersigned feel that we can no longer work with her. I request that her employment be terminated immediately. If this is not done, we will take appropriate action.

Steorye Kartychar Tredden B. Taback.

Den P. Chaple.
Bling about Randall.
Morney Copert

Paro D

him. 4/69 - Respectant EX. D'

Earl D. g. Reporte

はないというかが、「さんととなる」では、「なっている」というできます。 では、これでは、これでは、これでは、これでは、これでは、これでは、これできます。と

FINDINGS OF FACT AND CONCLUSIONS OF LAW

(SAME CAPTION)

KNAPP, D.J.

Both parties have submitted proposed Findings of Fact and defendant has submitted proposed Conclusions of Law. Having carefully reviewed defendant's submissions, I find them to be in substantial accord with my view of the facts and the law. A copy of them is attached hereto as Exhibit A, with certain handwritten changes made by the Court. As amended by such handwritten changes, the said Exhibit A is hereby adopted as the Court's Findings of Fact and Conclusions of Law pursuant to P.R.C.P. 52(a). Such Findings and Conclusions shall be deemed supplemental to those made on the record in open court at the close of plaintiff's case.

With respect to plaintiff's proposed Findings, none of them are supported by references to the record and many are duplicative of material set forth in defendant's proposals. However, I have selected some which seem to me valid and which might be helpful to plaintiff in the event of an appeal. The proposals thus selected are set forth in Exhibit B, and are hereby adopted as supplemental Findings of Fact pursuant to R. 52(a).

With respect to plaintiff's proposed Findings 43 to 45 (not adopted), I simply note that, while the facts therein set forth may very well be true. I have no recollection of their having been incorporated in the record.

SO ORDERED .

Dated: New York, New York

July 28, 1975.

Exhibit A

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

ODESSA CARRION,

Plaintiff,

-against-

71 Civil 3007 (WK)

NEW YORK UNIVERSITY and YESHIVA UNIVERSITY,

Defendants.

DEFENDANT YESHIVA UNIVERSITY'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Findings Of Fact

1. Plaintiff, Mrs. Odessa Carrion, is a black citizen of the United States.

- 2. Defendant, Yeshiva University (hereafter "Yeshiva"), is a corporation organized under the Education Law of the State of New York.
- 3. One of Yeshiva's divisions, the Albert Einstein College of Medicine (hereafter "College of Medicine") pursuant to contracts of affiliation provided certain professional, technical and other services to Lincoln Hospital, a municipal hospital situated in Bronx County.
- 4. Abraham Silverberg was at all times relevant the "Liaison" Officer or Administrator for Yeshiva University at Lincoln Hospital. Silverberg was responsible for administering the Lincoln Hospital affiliation contract between the City of New York and Yeshiva (P. Exh. 26, P. 5). Yeshiva employees at Lincoln Hospital were generally aware of his authority to hire and fire Yeshiva personnel other than medical doctors (See testimony of Manuel Metthew, 5/22/75).
- 5. Mrs. Carrion was employed by Yeshiva at Lincoln Hospital in connection with its affiliation activities at such Hospital (Tr. P. 11*).

Yeshiva Hires Plaintiff

6. Mrs. Carrion holds the degree of Master of Social Work (MSW). She was hired on January 3, 1967, by Yeshiva as a Social Work Supervisor in the Department of Social Service at Lincoln Hospital at a salary of \$11,000 (Tr. PP. 13-14).

Findings of Fact and Conclusions of Law

- 7. Until March 10, 1967, Mrs. Carrion's salary was primarily paid by the City of New York. In or about March, 1967, the City declined to pay Mrs. Carrion's salary and Yeshiva agreed to pay her entire salary of \$11,000 (Tr. P. 15).
- 8. A Miss Bernstein was the Director of Social Service at Lincoln Hospital and Mrs. Carrion's superior until July 1, 1967 (Tr. PP. 20, 26).
- 9. Mr. Raymond Cagan (who died in 1970) also held a MSW, and was a professional social worker of many years experience. He was at that time jointly employed by Yeshiva, as well as New York University, as a Social Worker and Student Unit Supervisor. In that position, Mr. Cagan was paid a salary of \$9,500 by Yeshiva and \$1,500 by New York University. Under that arrangement, Mr. Cagan was employed as a social worker at Lincoln Hospital, and he also had responsibilities to New York University in connection with New York University's School of Social Work in the field-work training of professional social work students at the Hospital (Plaintiff's Exh. 26).

Student Unit Supervisor Position

10. Some time in March, 1967, some two months after Mrs. Carrion was first employed by Yeshiva and at about the time Yeshiva assumed the responsibility for her entire salary, she indicated to Mr. Cagan that she would like to become a Student Unit Supervisor under the New York University arrangement (Tr. P. 21).

^{*} References to "Tr." are to the trial transcript and references to "Exh." are to exhibits introduced into evidence at trial.

- 11. Some time in April, 1967, Mrs. Carrion pursued such desire further by writing a letter of inquiry to a Professor Leon of New York University, who was in charge of the field-work aspect of that University's social worker educational program. She received a reply from Professor Leon some time in May and was shortly thereafter interviewed by him (P. Exh. 3).
- 12. The hiring of persons in such positions, carried on the payrolls of both Yeshiva and New York University, was a matter of joint decision of the two institutions involved (Tr. P. 27).
- Miss Bernstein, then the Director of the Social Service Department at Lincoln Hospital, was leaving her position. On that occasion Mrs. Carrion learned that Mr. Cagan was going to be promoted to the position to be vacated by Miss Bernstein. Mrs. Carrion, less than five months after she had been first employed by Yeshiva, applied to Mr. Cagan for the position that he held (hereafter "position '1'") and which would be vacant upon his promotion to the job of Director (Tr. P. 26).
- 14. Mr. Cagan at that time informed Mrs. Carrion that his job would only pay her \$9,500 if she took it, as New York University would no longer supplement the salary for that position (Tr. P. 27).
- 15. Mr. Cagan explained that New York University was no longer supplementing the salary of Student Unit Supervisors.

 Mrs. Carrion stated that she would not take the position for less

than \$11,000, became angry and walked out of the meeting with Raymond Cagan (Deposition of Plaintiff, P. 146, read into evidence on cross examination).

- 16. New York University stopped the supplementation of the salary for the position, although the position continued in part to represent New York University and continued to train its students (P. Exh. 25, PP. 155, 156).
- 17. Mrs. Carrion at that juncture stated and demonstrated that she was unprepared to take any cut in her salary, which was then \$11,000 (Deposition of Plaintiff, P. 146; P. Exh. 25, P. 1552; and Plaintiff's trial testimony).
- 18. In August, 1967, a Caucasian named Avis Crocker was hired by Yeshiva to fill the position that had been vacated by Mr. Cagan, who had been named Director of the Department of Social Service (P. Exh. 25, PP. 155, 156).
- at a salary of \$10,500. Miss Crocker, who also held a MSW degree, had worked at Lincoln Hospital for at least a year more than had Mrs. Carrion. Mr. Cagan testified that he selected Miss Crocker and he had personally known and respected Miss Crocker's work, she had satisfactorily participated in the field-work supervision of other social worker students a year before, and was deemed qualified and acceptable by New York University. Mr. Cagan also testified that he was aware of derogatory comments in Miss Crocker's file but discounted them because he believed that they were caused by a personal dispute between Miss Crocker and her

Findings of Fact and Conclusions of Law

Supervisor (P. Exh. 25, P. 173). Mr. Cagan was unfamiliar with Mrs. Carrion's work, she having been employed at the Hospital only a short time (P. Exh. 25, PP. 155, 156, 159-160, 173, 179, 180). Moreover, Mr. Cagan believed that Mrs. Carrion would not submit to a cut in salary and Mr. Cagan was aware that she was looking for other jobs (P. Exh. 25, P. 155).

- 20. The selection of Mass Crocker as opposed to Mrs.

 Carrion for position "l" was not based on racial or other invidious reasons.
- 21. Thereafter, Mrs. Carrion filed a complaint with the Commission on Human Rights of the City of New York (hereafter the "Commission"), alleging that she was a Negro and that Miss Crocker's employment in position "1" was a discriminatory and unlawful act under the Administrative Code of the City of New York.
- 22. A second occasion for the filing of a complaint by Mrs. Carrion with the Commission arose the following month, September, 1967. Another job opened at Lincoln Hospital that involved New York University: the position of Department Unit Supervisor of Group Work (hereafter "position '2'") (Tr. PP. 36, 37, 38).
 - 23. Mrs. Carrion did not apply for position "2" (P. Exh. 25, PP. 157, 165).
 - 24. On ner direct examination before the Commission in 1969, Mrs. Carrion testified as follows:
 - "Q. Thereafter, did another position become available in September of 1967 at Lincoln Hospital on the payroll of Einstein Medical College? A. Yes. Position as Department Unit Supervisor of Group Work at NYU became available.

Q. This is the second position of student unit supervisors that became available? A. Yes.

* * *

Q. Continue, please. A. This position was relayed to me through a memo that was sent around to the various units, that this position was available. This position was made known to me through a memo that was sent.

That memo stated NYU was opening up a second position--Student Unit Supervisor position--in group work.

I waited to see if I was going to be consulted about this, because I had q alifications in group work as well as in community organization, as well as in case work, as well as in psychotherapy.

So I waited to see if I were going to be approached about this; and I was not.

Then I came down and I filed another statement [before the Commission] in relation to it."

- 25. Mrs. Carrion believes her testimony before the Commission in 1969 was accurate and truthful.
- 26. Position "2" was filled by a Professor Levy, a Caucasian, at a salary of \$11,000, and Mrs. Carrion's complaint before the Commission was amended accordingly (Tr. Pp. 38-39; Deposition of Plaintiff, Pp. 151-152). According to Mrs. Carrion, Levy was a boyhood friend of Mr. Cagan.

Neighborhood Maternity Center Position

- 27. In September, 1967, Mrs. Carrion's salary was \$11,000 (P. Exh. 22), and in December, 1967, Mrs. Carrion, not having worked a full year in Yeshiva's employ, was still making \$11,000 in her supervisory position (P. Exh. 22).
- 28. A position in Yoshiva's Neighborhood Maternity

 Center (hereafter "position '3'"), because vacant when the incumbent left the job. The Neighborhood Maternia, Center is a satellite of Lincoln Hospital, was federally funded and to an experimental medical project under which maternity care is rendered to the community, but some distance away from the Hospital premises (P. Exh. 26, P. 38).
- 29. Mrs. Carrion did make an effort to apply for position "3" in the Neighborhood Maternity Center, and in fact held negotiations with regard to that job. Mrs. Carrion testified that she held salary negotiations with Mr. Abraham Silverberg in an attempt to obtain a salary in excess of \$12,500 (Tr. P. 41).

 a Mrs. De Morrissee —
- 30. Position "3" was filled by another person a social worker holding a MSW degree, who was eminently qualified for the position, and who had many rears of experience as an administrator (Testimony of Dr. Joseph Smith).
- 31. The incumbent who had vacated the position sought by Mrs. Carrion at the Neighborhood Maternity Center was a black and the person who was hired to fill the vacancy sought by Mrs. Carrion was also black (Tr. PP. 41, 49).

31 a. Dr. Smith's selections-of Mrs. De Morrissey one Mrs. Carrion was based exclusively on his evaluation of when relative fitness for the job.

Suspension and Discharge

- Mrs. Carrion's complaint on April 29, 1969, and continued on May 14, and June 23, 1969. By memorandum dated July 22, 1969, addressed to the College of Medicine administration, Mrs. Carrion "in lieu of taking legal action" demanded (a) that she be appointed to the faculty of the Albert Einstein College of Medicine, (b) that she be given a \$2,000 increase in salary, retroactive to 7-1-68, and (c) that she be given the title of Assistant Director of Social Service (Defendant's Exh. A).
- 33. In September, 1969, Mr. Raymond Cagan, Director of the Social Service Department, went on a one-month vacation.

 This trusting act precipitated a series of acts by Mrs. Carrion that created the imminent danger of not only interfering with, but h Iting patient care at Lincoln Hospital.
- 34. In Mr. Cagan's absence, Mrs. Carrion followed a course of conduct that was designed to bring about his dismissal from his job upon his return from vacation one month later.

 Mrs. Carrion actively sought written statements from other female Hospital employees to the effect that Mr. Cagan had sexually molested them (Tr. Pp. 62-63).

Findings of Fact and Conclusions of Law

- 35. On or about September 25, 1969, Mrs. Carrion sought to have an employee at Lincoln Hospital, Shirley Sanchez, sign a statement that she (Sanchez) had been sexually approached by Mr. Cagan in the Spring of 1968 (Tr. P. 63; D. Exh. I, P. 2). Miss Sanchez refused or declined to sign the statement prepared by Mrs. Carrion (Tr. PP. 63-64).
- 36. Mr. Abraham Silverberg, the Liaison Administrator for Yeshiva at Lincoln Hospital in October, 1969, was informed by City and Yeshiva employees at Lincoln Hospital that Mrs.

 Carrion was attempting to coerce certain City employees into signing a statement concerning the alleged sexual acts of her then vacationing supervisor, Mr. Cagan (P. Exh. 26, P. 90).
- 37. On or about October 3, 1969, Mr. Silverberg had also received two memos from members of the Social Service Department, objecting to Mrs. Carrion's coercive activity (D. Exhs. H, I).
- 38. On or about October 8, 1969, Mr. Silverberg received a petition signed by 21 members of the Social Service Department at Lincoln Hospital demanding "immediate dismissal of Mrs. Odessa Carrion, Supervisor in the Social Service Department as we can no longer work with her". (D. Exh. J).
- 39. On or about October 22, 1969, Mr. Silverberg received a memorandum from the MSW Supervisors (Mrs. Carrion's peers) demanding the immediate discharge of Mrs. Carrion in light of her "reprehensible behavior both as an individual and as a professional". The October 22 memorandum threatened "appropriate action" if Mrs. Carrion was not discharged (D. Exh. L).

40. Miss Kathleen Cullen, another City employee at
Lincoln had filed a grievance under the City's personnel procedures in connection with Mrs. Carrion's activities. That grievance
was heard on October 21, 1969, by Mr. Stanley Shulman, Lincoln
Hospital's Assistant Hospital Administrator, who was in charge of
the City's industrial relations at that Hospital. The text of
the October 22 memorandum from Shulman to Silverberg is as
follows:

"A hearing was held this morning in the office of Mr. Abraham Silverberg relative to a grievance filed by Kathleen Cullen concerning harassment by Mrs. O. Carrion, supervisor of Medical Social Service Out Patient Department and who is employed by AECOM affiliation.

The facts of the hearing revealed that Mrs. Carrion forceably pulled Miss Cullen into an office in the presence of Mrs. Carrion's secretary, Miss Vasquez, demanding that Miss Cullen sign a petition bearing allegations against the Director of Social Service which the grievant knew to be false. The grievant refused.

Approximately two (2) days later, Miss Cullen received a call from Mrs. Carrion who threatened that if she in turn signed any petition against her that she would be instrumental in having her lose her job. The grievant further testified to the fact that she heard Mrs. Carrion urge a co-worker, Shirley Sanchez, to sign a letter of complaint or petition against the Director of Service and that when Miss Sanchez refused, Mrs. Carrion did say, "Are you with the Puerto Ricans and Blacks or for the Whites." For whatever merits may exist, Miss Cullen who is on very friendly terms with Miss Sanchez, was told by this young lady that at no time and in no manner was anything said or done to warrant Mrs. Carrion making such allegations against the Director of the Service and that most assuredly nothing ever happened to her.

Miss Cullen had reported this matter to Miss Carrie Miller in a memorandum dated October 9th. Furthermore, an additional memorandum from another employee, Miss Joan Sasson, verifies the charge of harassment by Mrs. Carrion. Mr. George Kartychk, a Social Worker, in a memorandum of October 20, 1969 verifies that Miss Sanchez was being harassed by Mrs. Carrion and urged to sign a document of gross distortion.

With these facts before me, I find that several city employees have in fact been harassed and intimidated and asked to commit criminal libel by an employee of AECOM name, Mrs. Carrion.

I further find that Mrs. Carrion had no direct supervision over the three (3) employees involved and indeed Miss Sanchez had not been working in Social Service for over a year and that whatever allegations were made by Mrs. Carrion, allegedly took place more than a year and a half ago. This fact itself raises the suspicion that Mrs. Carrion is being motivated by purely personal animosity.

I think you will agree that we cannot permit any individual who has caused such Jestruction and such anxiety among our employees, after we have spent years trying to promote a harmonious interrelationship to remain here. The facts being what they are and although being without official power under the contract, I respectfully suggest that Mrs. Carrion is unfit to work here." (D. Exh. K).

41. Two unions demanded that the Liaison Administrator take actions against Mrs. Carrion: Local 1199, of the Drug and Hospital Workers Union, which represents Yeshiva employees at Lincoln Hospital, as well as District Council 37, which union represents City employees at Lincoln Applital.

threatened

- 42. Faced with what he considered to be a wildcat work stoppage and a volatile, emotionally charged situation that could interfere with patient care at Lincoln Hospital, and upon the advice of counsel, Yeshiva's Liaison Administrator by memorandum dated October 28, 1969, suspended Mrs. Carrion, with pay, for no longer than three weeks. Mrs. Carrion was informed by such memorandum that certain charges had been made against her by other employees, and that the purpose of the suspension was to allow an investigation to be made thereon. She was also required to absent herself from her duties in the Social Service Department during the period of suspension (P. Exh. 10).
 - 43. Mrs. Carrion's suspension with pay from the Hospital during this temporary period was intended to "cool" the threatened work stoppage, allow for a calm investigation of the facts, and give Mrs. Carrion the opportunity to be heard on the charges (P. Ehx. 26, P. 98).
 - 44. The text of the memorandum of suspension to Mrs. Carrion, dated October 28, 1969, stated as follows:

"This is to inform you that you are suspended, with pay, effective immediately, pending investigation.

For your information, a number of Social Service staff has insisted that your employment with the College of Medicine be terminated, on the ground that certain of your acts have been unprofessional and have tended to disrupt the effective functioning of the Social Service Department and the activities of the affiliation at Lincoln Hospital.

Your suspension will be for no longer than three (3) weeks, during which time you are requested to absent yourself from your duties and from the Social Service Department. This will give the Administration an opportunity to make full investigation of the circumstances. You may be requested to appear for investigatory conferences." (P. Exh. 10).

- 45. Mrs. Carrion received the Silverberg letter on October 28, 1969 (Tr. P. 52), and at that time she knew that she was a Yeshiva employee and she knew that Abraham Silverberg was Yeshiva's lisson repuschatul represented Yeshiva at Lincoln Hospital (Tr. P. 53).
- 46. Mrs. Carrion refused to absent herself from Lincoln Hospital and remained at the Hospital until October 31, 1969 (Tr. PP. 53, 56).
- 47. On October 29, 1969, Mrs. Carrion sent a letter to the Hospital Administrator for the City of New York at Lincoln Hospital, a Dr. Lubell. Mrs. Carrion also sent a copy of that letter to Mr. Silverberg. The text of the Carrion letter is as follows:

"This is to bring to your attention the statement informing me that I was being suspended for 3 weeks signed by Mr. Abraham Silverberg without giving me a hearing or spelling out specific charges against me.

As the laison officer, Mr. Silverberg does not have the authority to take this action as well as no basis on which to base such a suspension. This action represents a violation of his own position and abusing his own authority. The ludicrous basis which he is using is based on a petition where I had no hearing and on rumored hearings at which I was not present. This kind of action

demonstrates his abuse of his authority as well as his irregular behavior. I am requesting clarification of this matter as well as the charges I placed against the workers in Social Service. I gave you a copy of the letter document on 10/23/69.

I am requesting that proper action be taken against Mr. Silverberg for his reckless intrusion into the affairs of the Social Service Dept., in order to cause damage to me as a result.

I will continue to service my patients from the 17 clinics which my unit covers as they would suffer severely in my absence. There is no worker in my unit qualified or trained to take over this complicated and demanding service."

(P. Exh. 11).

- 48. Mr. Silverberg, after receiving Mrs. Carrion's letter of October 29, 1969, and aware that Mrs. Carrion had refused to obey his suspension letter, consulted with counsel and a city administrator. On October 31, 1969, acting for reshiva, he discharged Mrs. Carrion for insubordination (P. Exh. 12).
- 49. The Commission continued to hold hearings in November of 1969. On January 22, 1970, the Commission ordered that Mrs. Carrion be reinstated with back pay in the amount of \$3,200.01.

Action Of Commission

50. The Commission found that Mrs. Carrion had been discriminated against became of her color by Yeshiva in her denial of positions "1" and "2", and by her subsequent discharge. The Commission did not find Mrs. Carrion had been discriminated against with respect to position "3" (Final Decision and Order, Order of the City Commission on Human Rights).

- 51. The Commission's decision was reviewed and reversed by the Supreme Court of the State of New York. On August 6, 1970, Mr. Justice Dollinger found that the findings of discriminatory practices by the Commission were not supported by substantial evidence, and that the "substantial evidence established that

 . . [Mrs. Carrion's] unjustified insubordination resulted in her discharge."
- 52. The Appellate Division affirmed unanimously, and the Court of Appeals denied leave to appeal on May 31, 1971.
- 53. On or about October 5, 1967, Mrs. Carrion filed a complaint with the Equal Employment Opportunity Commission (hereafter "E.E.O.C."). On June 8, 1971, the E.E.O.C. notified her that she was entitled to institute this action (Complaint, Paragraph "XI").
- 54. On June 2, 1971, following the reversal and annulment of the Commission's order, Ers. Carrion was discharged by Yeshiva and was notified of said discharge by a letter of that date (P. Exh. 18).
- 55. This action was commenced on or about July 6, 1971, against New York University and Yeshiva. Plaintiff voluntarily dismissed the action against New York University on the eve of trial.

Credibility of Witnesses

56. The plaintiff, Mrs. Odessa Carrion, testified at trial and her testimony was not credible and was not believable as it related to the material allegations.

- 57. Mr. Abraham Silverberg was initially called by the plaintiff and his testimony was credible and believed in all material respects. The testimony of plaintiff's witnesses, Manuel Metthew and Dr. Walker supported and corroborated the testimony of Mr. Silverberg.
- 58. Plaintiff introduced the testimony of Mr. Raymond Cagan before the Commission (P. Exh. 25) and the Court accepts that testimony as truthful.
- 59. Dr. Joseph J. Smith was called by Yeshiva during plaintiff's case with the express consent of the plaintiff. Dr. Credible
 Smith was a creible witness and his testimony is accepted as truthful.

Conclusions Of Law

- 1. Plaintiff has failed to demonstrate a prima facie of discrimination based on the color of her skin with respect to positions "1", "2" and "3".
- 2. Plaintiff did not apply for position "2", and the Yeshiva employee responsible for hiring did not believe that Mrs. Carrion was interested in position "3" at the time it was filled.
- 3. Plaintiff was suspended with pay for a period of no longer than three weeks on October 28, 1969. Plaintiff wilfully and deliberately refused to comply with the suspension directions of October 28, 1969 (P. Exh. 10) and sent her employer's representative a letter calculated to be insulting (P. Exh. 11).
- 4. The plaintiff failed to demonstrate that her suspension and subsequent discharge was motivated by racial consideration or the color of her skin.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

- 5. The overwhelming evidence indicates that Mrs.

 Carrion's suspension and subsequent discharge was brought about by her deliberate and calculated insubordination which Yeshiva reasonably believed might jeopardize the well-being of patients at Lincoln Hospital.
- 6. The suspension and discharge of Mrs. Carrion did not deprive her of any rights under the Constitution and laws of the United States.

Dated: New York, New York June 12, 1975

Respectfully submitted,

SIDNEY SCHUTZ, ESQ. Attorney for the Defendant Yeshiva University

Y Comi

ANIEL RIESEL Of Counsel

425 Park Avenue

New York, New York 10022 Tel. No. (212) 421-2150

EXHIBIT B

3. Plaintiff is a trained and experienced social worker having her Master's degree and over twenty years of experience in the field as of 1967. While at Lincoln Hospital, she received favorable recommendations from her supervisors.

No question has been raised as to her qualifications. Plaintiff now holds the position of Director of Social Work for the Health and Hospitals Corporation and has held this position since October 1971.

- 8. Plaintiff had never received any communication written or personal from Mr. Silverberg regarding such insistencies [that her employment be terminated] by members of the social service staff prior to the October 28 memorandum.
- 17. At no time during this period, did Mr. Silverberg attempt to contact the plaintiff other than his memoranda of October 28 and 31, 1969. At no time did he seek to learn from her of her version of the facts regarding the controversy upon which he based his suspension.
- 19. Mr. Silverberg as Liaison Officer at Lincoln discharged only one other person, Mr. Manuel Mathew. Mr. Mathew was Mr. Silverberg's administrative assistant. Mr. Silverberg had hired Mr. Mathew. He summarily discharged him in January 1969) as Mr. Mathew was preparing to leave for lunch. Mr. Mathew is of Puerto Rican nationality.
- a result of community complaints about his discharge, he eventually left his position as a result of dissatisfaction with his subsequent treatment by Mr. Silverberg.
- by their supervisor, Miss Violet Bemmels. Plaintiff's evaluation was favorable and recommended her for the student unit supervisor's position. The evaluation of Miss Crocker was unfavorable and recommended that she not be allowed to continue to supervise.

DEFENDANT'S MOTION AND AFFIDAVIT ON COUNSEL FEES

(Same Caption) S I R S :

PLEASE TAKE NOTICE that upon the annexed affidavit of Daniel Riesel, sworn to June 12, 1975, and upon all of the proceedings heretofore herein, defendant, Yeshiva University, will move this Court, in Room 506, United States Courthouse, Foley Square, New York, New York, on June 27, 1975, at 2:00 o'clock in the afternoon, or as soon thereafter as counsel may be heard, for an order:

- Awarding it reasonable attorney's fees as part of the costs of this action, pursuant to Section 2000e-5(k) of Title 42, United States Code; and
- 2. Awarding discretionary costs, pursuant to Rule 54(d) of the Federal Rules of Civil Procedure.

Dated: New York, New York June 13, 1975

Yours, etc.

SIDNEY SCHUTZ, ESQ. Attorney for Defendant, Yeshiva University

TO: JAMES C. GRAY, ESQ.
Attorney for Plaintiff
Odessa Carrion
10 Columbus Circle
New York, NY 10019

DANIEL RIESEL
Of Counsel

425 Park Avenue
New York, New York 10022

Tel. No. (212) 421-2150

STATE OF NEW YORK)

COUNTY OF NEW YORK)

Daniel Riesel, being duly sworn, deposes and says:

1. I am counsel to Sidney Schutz, General Counsel and the attorney of record for the defendant, Yeshiva University, in the above captioned matter. I make this affidavit in support of

Yeshiva University's motion for reasonable attorney's fees, pursuant to Title 42 U.S.C. § 2000e-5(k) and certain discretionary costs in the within captioned action.

An award of attorney's fees for the prevailing party is specifically authorized under the aforementioned section of the Civil Rights Act of 1206. It is submitted that such an award is particularly appropriate in this case because of the plaintiff's persistence in litigating a meritless action, her calculated and disingenuous testimony at the trial of this action and the eleemosynary character of the defendant, Yeshiva University.

History of the Litigation

2. The instant case was commenced on or about July 6, 1971. However, it was preceded by extensive hearings and decisions before the Commission on Human Rights of the City of New York (hereafter the "Commission"), statutory review before a Supreme Court of New York and thereafter review by the Appellate Division and Court of Appeals.

The Commission found that Yeshiva had engaged in discriminatory practices with respect to the two Student Unit Supervisor positions and Mrs. Carrion's discharge. The Commission specifically found that there was not sufficient evidence to support plaintiff's claim of racial discrimination with respect to the position with the Neighborhood Maternity Center. The Commission's decision was rendered on or about January 22, 1970.

Despite the almost complete absence of any rules of evidence limiting the introduction of evidence, a justice of the Supreme Court found that the findings of the Commission were unsupported by substantial evidence and that Mrs. Carrion's dis-

charge was justified by her flagrant insubordination. The Appellate Division of the Supreme Court unanimously affirmed the Supreme Court's decision and the Court of Appeals denied leave to appeal.

3. The Complaint of July 6, 1971, essentially alleged the same claims for relief as the plaintiff had urged before the Commission despite the fact that the Commission had failed to find any discriminatory practices with respect to the Neighborhood Maternity Center position. The complaint prayed for damages as well as injunctive relief and alleged jurisdiction under Title VII of the Civil Rights Act of 1964, 42 J.S.C. §§ 2000e et seq. Jurisdiction was also alleged under 42 U.S.C. § 1981.

On or about June 29, 1971, plaintiff moved for a preliminary injunction and the defendant, Yeshiva, cross moved for summary judgment. On Aprix 3, 1972, Judge Tenney denied both motions on the grounds that there were factual issues that would have to be resolved at trial. Thereafter, Yeshiva interposed its answer on or about July 13, 1972.

In addition to Yeshiva University, the complaint named New York University despite the fact that New York University had been dismissed at the end of plaintiff's prima facie case before the Commission. New York University answered on or about July 21, 1972.

4. Thereafter, on or about November 15, 1973, plaintiff moved to amend her complaint to reflect allegations of a denial of due process in her firing on the grounds that she was not given a hearing prior to her surpension and discharge. That motion was opposed by both defendants, but was granted by this Court.

Pre-Trial Discovery And Trial

- 5. The defendant, Yeshiva, served a notice to take the plaintiff's deposition on April 29, 1974, and deposed the plaintiff on two separate dates in May and June, 1974.
- 6. Plaintiff commenced discovery proceedings on or about May 4, 1974, by serving extensive interrogatories and requests for admissions of facts. Thereafter, a request for a production of documents and a Notice to Take the deposition of Abraham Silverberg was served. Yeshiva answered plaintiff's request for admissions on June 17, 1974, and plaintiff's interrogatories on June 21, 1974. Thereafter plaintiff served a second set of interrogatories on or about August 15, 1974, which was answered by Yeshiva on or about September 24, 1974. Plaintiff also took the deposition of the defendant, Yeshiva, by its employee, Abraham Silverberg, on two separate dates in 1974.
- 7. Throughout the pre-trial period counsel for the respective parties exchanged documents and information upon written or oral demand. A magistrate was assigned to supervise discovery, and in December, 1974, an extensive pre-trial order was formulated and sent to the Court.
- 8. Trial was commenced on May 21, 1975. After a day and a half the plaintiff rested, and the Court dismissed her complaint because of her failure to prove a prima facie case.

Probability of Appeal

9. I have been informed by plaintiff's counsel that Mrs. Carrion intends to appeal from the decision of this Court and is in the process of obtaining appellate counsel.

Settlement Attempts

- settlement with plaintiff's counsel, making an initial offer of approximately \$3,000. Your deponent also suggested that Yeshiva would be willing to waive its claim for the \$3,400 award of back pay obtained pursuant to the interim order of the Commission.

 These offers of compromise were spurned by the plaintiff. In January, 1974, it became readily apparent that plaintiff was not prepared to settle this matter at a reasonable compromise figure and the pre-trial discovery process indicated serious problems of proof for the defendant, Yeshiva.
- Il. These problems of proof appeared from plaintiff's testimony in her pre-trial deposition wherein it appeared that the plaintiff had carefully altered the recitation of the facts before the Commission so that her case would be improved. This alteration was further compounded by the fact that Raymond Cagan had died subsequent to his testimony before the Commission. Further problems were created by the passage of time and the fact that witnesses found it difficult to remember the exact details of transactions that had occurred in the years 1967 through 1969.

Costs Of The Litigation

12. It is against this background, and the prospect of an appeal, that the defendant, Yeshiva University, makes application for reasonable attorney's fees and certain discretionary costs. With respect to the reasonable attorney's fees, Yeshiva University's time records are not available for the amount of time devoted to this case by lawyers on the University's General

Counsel staff, and accordingly, no specific claim is made for compensation for the legal services performed by the General Counsel's staff. A claim for reasonable attorney's fees is made based upon the detailed time records of trial counsel retained by Yeshiva University after the member of the General Counsel's staff handling this matter left the University's employment. However, we hasten to add that the hours spent by the General Counsel's staff in opposing the motion for preliminary injunction and in preparation for Yeshiva's cross motion for summary judgment were extensive. Moreover, the General Counsel and members of his staff have put in numerous hours in connection with trial counsel's defense of this matter. Despite the absence of records, these extensive professional services of the General Counsel should be generally considered in evaluating the amount of the award.

- 13. With respect to the fees incurred by Yeshiva by virtue of legal services performed by trial counsel, your deponent has devoted more than 120 hours to the defense of this action.

 Associates of your deponent have rendered over 70 hours of professional services.
- 14. As an aid to the Court in evaluating the reasonable value of such professional services, your deponent states that he is a member of Winer, Neubelger & Sive, Esquires, and previously served as an Assistant United States Attorney in the Southern District of New York.

Reasons For An Award Of Attorney's Fees

15. Initially, we note that the applicable statute,
42 U.S.C. § 2000e-5(k) specifically provides for an award of
attorney's fees to the prevailing party. As the record reflects
plaintiff's case was dismissed after the completion of its case

pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. Thus, not only did Yeshiva prevail, but the plaintiff did not even succeed in making out a prima facie case. Moreover, plaintiff was well aware of the deficiencies in this litigation as she had been through an extensive hearing before the Commission. Although the Commission found that three of her allegations were well founded, the courts in New York State went so far as to find that the record was not even supported by substantial evidence. Thus, the plaintiff even with the exceedingly liberal rules of evidence was not able to make out a legally sufficient case before the Commission. Finally in this regard, the Commission did not sustain one of the allegations that was subsequently brought, that is, the denial of a job at the Neighborhood Maternity Center.

16. It cannot be doubted that plaintiff knew or should have known of the evidence available for trial as her counsel had conducted extensive discovery. Nevertheless, plaintiff persisted in burdening this Court and the defendant with the time and expense of trial preparation and trial.

We are now informed that plaintiff intends to prosecute an appeal despite the clear evidentiary findings of this (ourt.

able attorney's fees is the lack of truthfulness of the plaintiff. In the instant case the District Judge specifically found that Mrs. Carrion was untruthful and could not be believed. Indeed, the record shows that she conveniently changed her story to bolster her case. It was Mrs. Carrion's disingenuousness and failure to tell the truth that propelled this case into the federal courts for a third round of litigation.

- 18. A mird factor that should be considered in this matter is the relative ability of the plaintiff to bear the award of attorney's fees. On information and belief, plaintiff was not charged counsel fees and costs by her legal representatives, who are employees of an eleemosynary organization. On information and belief, the plaintiff has a salary from the City of New York of approximately \$25,000 a year and maintains only herself on that salary.
- 19. A fourth factor in evaluating the suitability of an award of attorney's fees is the nature of the defendant in this case. The defendant, Yeshiva University, is a charitable educational organization. The time and money that it has been forced to expend on the defense of this action are extensive and could have been better spent in educating students.
- 20. Finally, we suggest that an award of reasonable attorney's fees would be proper'in this case as it would act to discourage unfounded and frivolous actions.

In handling this action, it became clear to your deponent that it was fueled and energized by the plaintiff's unreasonable desire to inflict injury upon her former employer.

Absolutely no check whatsoever existed upon this source of the litigation. Plaintiff did not have to expend any money whatsoever for attorney's fees and plaintiff's counsel apparently saw nothing to lose in pressing this matter on to trial. Accordingly, an award of reasonable fees would be a salutory affect on other litigants, inducing them to consider the consequences of bringing unfounded actions.

21. With respect to the actual amount of an award, we are constrained to realize that the Court may be reluctant to re-

Defendant's Motion and Affidavit on Counsel Fees

imburse Yeshiva University for its entire expenses in resisting this unfounded action. Never eless, we suggest that it would be more than reasonable to award Yeshiva University \$5,000 in attorney's fees. This sum, of course, is less than Yeshiva's total payments and obligations to trial counsel for professional services, and does not begin to account for the efforts of the General Counsel.

Award Of Costs

- 22. In addition to the award of attorney's fees,
 Yeshiva makes application for an award of certain stenographic
 costs pursuant to Rule 54(d) of the Federal Rules of Civil Procedure.
- 23. Application is made for the cost of a "daily" copy of the first day's proceedings, a regular copy of the second day's proceedings and the cost of the deposition of Odessa Carrion.

The costs of the daily transcript for May 21, 1975 is \$182.36. The cost estimated by the Southern District Court Maporters for a copy of the regular transcript of May 22, 1975 is \$350.00. A copy of the daily has been received and Yeshiva intends to order a copy of the May 22, 1975 hearing.

The cost of the deposition of Odessa Carrion was \$448.00.

24. The foregoing costs were necessary to the defense of this action. The Court should favorably exercise its discretion to award such costs to the fendant, Yeshiva.

Thus, plaintiff testified on the afternoon of the first day and as significant inconsistencies appeared between her testimony and the known state of facts, it was thought advisable

1.

Defendant's Motion and Affidavit on Counsel Fees

to order a daily copy of that transcript. Although the transcript was timely ordered on a daily basis, the Southern District Court Reporters were not able to furnish it until after Mrs. Carrion had testified on May 22, 1975. Nevertheless, Yeshiva is obligated for the daily cost and it was reasonable at the time for Yeshiva to attempt to have a transcript of the plaintiff's direct testimony available during the plaintiff's cross examination.

A copy of the second day's proceeding will be ordered as it constitutes a memorialization and resolution of grave allegations that have been of considerable concern to Yeshiva University and the Albert Einstein College of Medicine. Moreover, the expense of the entire transcript is justified as we have been advised that plaintiff intends to appeal and is presently in the process of retaining appellate counsel for such purposes.

- 25. The defendant, Yeshiva, also makes application for the cost of Odessa Carrion's deposition. Her deposition was invaluable for the preparation and defense of this matter. It was specifically used to impeach the witness on cross examination and on that basis is a cost that should be taxed.
- 26. In closing, the defendant, Yeshiva University, is an institution that has been proud of its distinguished record not only in the education field, but in the area of race relations. It has been burdened and saddled with eight years of administrative and judicial litigation, which we submit facts show was unfounded. It now faces a costly appeal, which, although it certainly cannot succeed, will be burdensome. We think it is time that the plaintiff picked up part of the bill for her unfounded

Defendant's Motion and Affidavit on Counsel Fees

litigation.

WHEREFORE, it is prayed that defendant's motion be granted in all respects and that plaintiff be ordered to pay the defendant \$5,000.00 to defray its attorney's fees, and \$980.36 for stenographic costs, in addition to other costs that may be taxed by the Clerk of the Court.

Daniel Riesel

Sworn to before me this 12th day of June, 1975.

NOTARY PUBLIC

Public D. RAND Negary Public, Suits of New York 11st 41,5527 Qualified in Nation County Commission Express March 20, 1976 UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

ODESSA CARRION.

Plaintiff,

- against -

MEMORANDUM AND ORDER

YESHIVA UNIVERSITY,

71 Civ. 3007

3 1 1975

Defendant.

40156.

APPEARANCES:

JACK GREENBERG
ERIC SCHNAPPER
JAMES C. GRAY, JR.
Attorneys for Plaintiff
10 Columbus Circle
New York, New York 10019

ICROFILM Jul. 3 1 E75

SIDUEY SCHUTZ, ESQ.
Attorney for Defendant Yeshiva University
By: DANIEL RIESEL, ESQ.
425 Park Avenue
New York, New York 10022

KNAPP, D.J.

The question presented by defendant's post for the award of attorney's fees and costs is whether this defendant in a Title VII action should be granted such an award against this employee-plaintiff who unsuccessfully contended that she had been denied promotion and had been subsequently fired on grounds of race. Concededly, discretion should be sparingly exercised in awarding attorney's fees and taxing costs against a Title VII plaintiff, as the entire regislative scheme embodied in that Title is to encourage persons aggreived on racial grounds to come into court. See, Newman v. Piggie Park Enterprises, Inc. (1968) 390 U.S. 400, 402, U.S. Steel Corp. v. United States (W.D. Pa. 1974) 385 F.Supp. 346. However, this case presents an occasion for the exercise of such discretion.

Plaintiff was concededly denied promotion and she was concededly fired. Moreover, she had been active in filing complaints against her employer before the New York Human Rights Commission. The thrust of her claim was that all her troubles resulted from- (a) racial discrimination and (b) retaliation for her activity in seeking legal redress for her alleged wrongs. After a two-day bench trial, I concluded that her testimony constituted an unmitigated tissue of lies; that no one had discriminated against her; and that the reason she was fired was that she had engaged in deliberately

disruptive* conduct having nothing to do with the exercise of any constitutional or statutory right (but was motivated solely by splean) and because she had defied reasonable attempts to control her activities. In the circumstances, I see no reason why Yeshiva University should be compelled to divert its funds to the defense of this vexatious lawsuit.

U.S. Steel Corp. v. U.S., supra.

The counsel fees sought (\$5000.00 for 120 hours of partner's time and 70 hours of associates' time) seems extremely moderate, in light of counsel's excellent performance. Moreover, it is undisputed that plaintiff is presently earning \$25,000 a year, has no dependents and has paid no attorney's fees of her own to date. Also allowed are \$182.36 for daily transcript and \$448.00 for plaintiff's deposition, plus regular statutory costs. The \$350.00 for the balance of the trial minutes is disallowed as presently unnecessary, without prejudice to a new application should such minutes be required for appeal.

Dated: New York, New York July 28, 1975.

. F. T.

WHITMAN KNAPP, U.S.D.J.

At the conclusion of the trial, I specifically declined to characterize plaintiff's conduct, for two reasons. In the first place, such
hearsay. On the present motion, however, would have been based on
my discretion is involved, I feel I can rely on such hearsay because I have found (1) it to be reliable and (2) plaintiff to have
deliberatedly perjured herself in denying the truth thereof.



Copy secured

1/12/76 10:30 A.M.

Winer, Neuburger & Sive
by fisher Albury Leland